United Nations

Report of the Committee against Torture

Forty-first session (3-21 November 2008)

Forty-second session (27 April-15 May 2009)

General Assembly
Official Records
Sixty-fourth Session
Supplement No. 44

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United Nations • New York, 2009

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ISSN 1020-170X

[28 September 2009]

Contents

Chapter		Paragraphs	Page
I.	Organizational and other matters	1–22	1
	A. States parties to the Convention	1–3	1
	B. Sessions of the Committee	4	1
	C. Membership and attendance at sessions	5	1
	D. Agendas	6–7	1
	E. Participation of Committee members in other meetings	8	2
	F. Activities of the Committee in connection with the Optional Protocol to the Convention	9	2
	G. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture	10	2
	H. Statement of the Committee on the adoption of its concluding observations	11–12	2
	I. Recommendations of the eighth inter-committee meeting	13	3
	J. Informal meeting with the States parties to the Convention	14	3
	K. Participation of non-governmental organizations	15	3
	L. Participation of national human rights institutions	16–17	4
	M. Rules of procedure	18	4
	N. Reporting guidelines for treaty-specific documents	19	4
	O. Decision of the Committee to request approval from the General Assembly for additional meeting time in 2010 and 2011	20–22	4
II.	Submission of reports by States parties under article 19 of the Convention	23–29	6
	A. Invitation to submit periodic reports	26	6
	B. Optional reporting procedure	27	6
	C. Reminders for overdue initial reports	28–29	7
III.	Consideration of reports submitted by States parties under article 19 of the Convention	30–52	8
	Belgium	37	9
	China	38	17
	Hong Kong	39	29

Macao 40 33

Kazakhstan 41 35

Kenya 42 45

Lithuania 43 53

Montenegro 44 60

Serbia 45 66

Chad 46 74

Chile 47 84

Honduras 48 91

Israel 49 98

New Zealand 50 106

Nicaragua 51 112

Philippines 52 119

IV. Follow-up on concluding observations on States parties reports 53–65 129

V. Activities of the Committee under article 20 of the Convention 66–70 138

VI. Consideration of complaints under article 22 of the Convention 71–95 139

A. Introduction 71–74 139

B. Interim measures of protection 75–78 139

C. Progress of work 79–88 140

D. Follow-up activities 89–95 143

VII. Future meetings of the Committee 96–97 216

VIII. Adoption of the annual report of the Committee on its activities 98 217

Annexes

I. States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 15 May 2009 218

II. States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 15 May 2009 223

III. States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 15 May 2009 224

IV. Membership of the Committee against Torture in 2009 227

V. States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as of 31 March 2009 228

VI. Membership of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2009 231

VII. Second annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 232
VIII. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture 265
IX. Statement of the Committee on the adoption of its concluding observations 267
X. Decision of the Committee to request approval from the General Assembly at its sixty-fourth session for additional meeting time in 2010 and 2011 269
XI. Overdue reports 270
XII. Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its forty-first and forty-second sessions 279
XIII. Decisions of the Committee against Torture under article 22 of the Convention 281

A. Decisions on merits

Communication No. 257/2004: *Keremedchiev v. Bulgaria* 281
Communication No. 261/2005: *Besim Osmani v. Serbia* 289
Communication No. 291/2006: *Saadia Ali v. Tunisia* 310
Communication No. 285/2006: *A. A. et al. v. Switzerland* 332
Communication No. 306/2006: *E. J. et al. v. Sweden* 338
Communication No. 316/2007: *L. J. R. v. Australia* 347
Communication No. 324/2007: *Mr. X v. Australia* 358
Communication No. 326/2007: *M. F. v. Sweden* 369
Communication No. 332/2007: *M. M. et al. v. Sweden* 378

B. Decision on inadmissibility

Communication No. 323/2007: *P. K. et al. v. Spain* 385

I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 15 May 2009, the closing date of the forty-second session of the Committee against Torture (hereinafter referred to as "the Committee"), there were 146 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"). The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report Rwanda has become party to the Convention. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found in the United Nations website (www.un.org - Site index - treaties).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The forty-first session (836th to 865th meetings) was held at the United Nations Office at Geneva from 3 to 21 November 2008, and the forty-second session (866th to 895th meetings) was held from 27 April to 15 May 2009. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.836-895).

C. Membership and attendance at sessions

5. The membership of the Committee remained the same during the period covered by this report. The list of members with their term of office appears in annex IV to the present report.

D. Agendas

6. At its 836th meeting, on 3 November 2008, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/41/1) as the agenda of its forty-first session.

7. At its 866th meeting, on 27 April 2009, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/42/1) as the agenda of its forty-second session.

E. Participation of Committee members in other meetings

8. During the period under consideration, Committee members participated in different meetings organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR): the seventh inter-committee meeting, held from 23 to 25 June 2008, was attended by Ms. Gaer, Mr. Grossman and Mr. Mariño; the latter also participated in the nineteenth meeting of chairpersons from 26 to 27 June 2008. The eighth inter-committee meeting, held from 1 to 3 December 2008, was attended by Mr. Mariño and Mr. Wang.

F. Activities of the Committee in connection with the Optional Protocol to the Convention

9. As at 31 March 2009, there were 46 States parties to the Optional Protocol (see annex V). As required by the Optional Protocol to the Convention, on 18 November 2008, a joint meeting was held between the members of the Committee and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter "the Subcommittee on Prevention"). Both the Committee and the Subcommittee on Prevention (membership of the Subcommittee on Prevention is included in annex VI) agreed on modalities for cooperation, such as the mutual sharing of information, taking into account confidentiality requirements. The informal contact group consisting of members of the Committee and the Subcommittee on Prevention continued to facilitate the communication between both treaty bodies. A further meeting was held between the Committee and the Subcommittee on Prevention on 12 May where the latter submitted its second public annual report to the Committee (CAT/C/42/2 and Corr.1). The Committee decided to transmit it to the General Assembly (see annex VII).

G. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

10. A joint statement with the Subcommittee on Prevention; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture, and the Committee on the Rights of Persons with Disabilities was adopted to be issued on 26 June 2009, the International Day in Support of Victims of Torture (see annex VIII).

H. Statement of the Committee on the adoption of its concluding observations

11. At its forty-second session, the Committee adopted a statement on the adoption of its concluding observations. This Statement reiterates that the Committee is an independent treaty body carrying out its functions under the Convention, which consists of experts of high moral standing and recognized human rights competence serving in their personal capacity, and elected by the States parties, consideration being given to equitable geographical distribution. The Statement also reiterates that the Committee discharges its function in an independent and expert manner.

12. The Statement underlines that concluding observations are an instrument of cooperation with States parties, which reflect the common assessment, made by the Committee as a whole, on the

implementation of the obligations under the Convention of the State party concerned and that all States parties are obliged to cooperate with the Committee and respect the independence and objectivity of its members (see annex IX).

I. Recommendations of the eighth inter-committee meeting

13. At its forty-second session, the Committee discussed the recommendations of the eighth inter-committee meeting, especially:

(a) The possibility of a merger of the inter-committee meeting and meeting of chairpersons which would allow for the ninth inter-committee meeting to take a decision on this issue, which the Committee supported;

(b) The possibility to enhance the decision-making role of the inter-committee meeting with regard to harmonization of working methods, which the Committee did not support;

(c) The necessity for OHCHR to allocate additional human and financial resources for the Human Rights Treaties Branch in order to ensure effective and continuous support for the work of the treaty bodies, which the Committee supported;

(d) The need to assess and analyse the follow-up procedure, identifying difficulties, obstacles and results, which the Committee supported;

(e) The need to develop effective cooperation between the treaty bodies and the Human Rights Council and strengthen institutional links among them;

(f) The possibility to further prioritize concerns in the concluding observations so that these are appropriately reflected in the compilations that contain summaries of United Nations information;

(g) The reference to the pledges and commitments made by States parties in the context of universal periodic review during their dialogue with States parties and concluding observations.

J. Informal meeting with the States parties to the Convention

14. At its forty-second session, on 28 April 2009, the Committee held an informal meeting with representatives of 47 States parties to the Convention. The Committee and the States parties discussed the following issues: methods of work; targeted reports or lists of issues prior to the submission of periodic reports; follow-up to articles 19 and 22 of the Convention; the relationship between the Committee and the Subcommittee on Prevention; possible enlargement of the membership of the Committee; and possible additional meeting time.

K. Participation of non-governmental organizations

15. The Committee has long recognized the work of non-governmental organizations (NGOs) and met with them in private, with interpretation, on the afternoon immediately before the consideration

of each State party report under article 19 of the Convention. The Committee expresses its appreciation to the NGOs, for their participation in these meetings and is particularly appreciative of the attendance of national NGOs, which provide immediate and direct information.

L. Participation of national human rights institutions

16. Similarly, the Committee has since 2005 met with the national human rights institutions (NHRIs) and other institutions of civil society where these exist, of the countries it has considered. Meetings with each NHRI that attends take place, in private, usually on the day before consideration of the State party report.

17. The Committee is extremely grateful for the information it receives from these institutions, and looks forward to continuing to benefit from the information it derives from these bodies, which has enhanced its understanding of the issues before the Committee.

M. Rules of procedure

18. At its forty-second session, the Committee initiated the revision of its rules of procedure (CAT/C/3/Rev.4), amended previously at its thirteenth (November 1996), fifteenth (November 1997) and twenty-eighth (May 2002) sessions, in order to update these rules, especially with regard to the decisions taken by the meetings of chairpersons of human rights treaty bodies and the inter-committee meetings, and to bring them in line with new methods of work that the Committee is implementing as well as to include the adoption of new procedures.

N. Reporting guidelines for treaty-specific documents

19. At its forty-second session, the Committee initiated the revision of its treaty-specific reporting guidelines, in light of the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document (as contained in HRI/GEN/2/Rev.5).

O. Decision of the Committee to request approval from the General Assembly for additional meeting time in 2010 and 2011

20. At its thirty-eighth session in May 2007, the Committee adopted a new reporting procedure which includes the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a periodic report. The replies of the State party to the list of issues would constitute its report under article 19 of the Convention. The Committee has decided to initiate this procedure in relation to periodic reports that are due in 2009 and 2010, which will not be applied to initial reports or to periodic reports already submitted and awaiting consideration by the Committee.

21. In view of the fact that there are 11 States parties to the Convention whose reports will be due in 2009 (Bosnia and Herzegovina, Cambodia, Czech Republic, Democratic Republic of the Congo, Ecuador, Greece, Kuwait, Monaco, Peru, South Africa and Turkey) and 9 whose reports will be due in 2010 (Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico, Russian Federation and Saudi Arabia), additional meeting time in 2010 and 2011 is needed for the effective

and timely discharge of its responsibilities by the Committee under article 19 of the Convention. For the new procedure to be effective, reports need to be considered within a 12-month period of their receipt, as this will ensure that no further updating of information is required from States parties and thus will eliminate the need for written replies and list of issues after the reports have been received.

22. In view of the effective implementation of this optional procedure and with the acknowledgement of the programme budget implications arising from the Committee's decision, the Committee decided to request the General Assembly to provide appropriate financial support to enable it to meet for an additional session of four weeks in each of 2010 and 2011, in addition to the two regular three-week sessions per year (see annex X).

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

23. During the period covered by the present report, 11 reports from States parties under article 19 of the Convention were submitted to the Secretary-General. An initial report was submitted by the Syrian Arab Republic. Second periodic reports were submitted by Albania, Jordan and Yemen. Third periodic reports were submitted by Liechtenstein and Slovenia. Fourth periodic reports were submitted by Cameroon and Morocco. A combined fourth and fifth periodic report was submitted by Austria. A combined fifth and sixth periodic report was submitted by Switzerland and a combined fourth, fifth and sixth periodic report was submitted by France.

24. As of 15 May 2009, the Committee had received a total of 221 reports.

25. As at 15 May 2009, there were 210 overdue reports (see annex XI).

A. Invitation to submit periodic reports

26. At its forty-first session, the Committee decided to invite States parties, in the last paragraph of the concluding observations, to submit their next periodic reports within a four-year period from the adoption of the concluding observations, and to indicate the due date of the next report in the same paragraph. It also decided not to request consolidated reports when inviting States parties to submit their next periodic report.

B. Optional reporting procedure

27. Considering the positive feedback received from States and their acceptance of the new optional reporting procedure, the Committee decided at its forty-second session to continue, on a regular basis, with this procedure, adopted in May 2007 at its thirty-eighth session. This procedure consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their periodic report. In this regard, the Committee:

(a) Adopted lists of issues for States parties whose reports are due in 2010 (Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico, Russian Federation and Saudi Arabia). This adoption was done in plenary, following the Committee's decision to adopt all its lists of issues in plenary. These lists of issues will be transmitted to the respective States parties with a request that replies be submitted by September 2010, should the State party wish to avail itself of the new procedure. In that respect, the Committee will also request that it be informed by these nine States parties as to their intention of availing themselves of the new procedure by 31 July 2009. This information will allow the Committee to plan its meeting requirements to ensure the timely consideration of reports;

(b) Decided that it will prepare, adopt and transmit lists of issues for States parties whose reports are due in 2011, which are Bahrain, Benin, Denmark, Estonia, Georgia, Germany, Guatemala, Italy, Japan, Latvia, Luxembourg, Namibia, the Netherlands, Norway, Paraguay, Poland, Portugal, Sri Lanka, Tunisia, Ukraine, United States of America and Uzbekistan.

C. Reminders for overdue initial reports

28. At its forty-first session, the Committee decided to send reminders to all State parties whose initial reports were three or more years overdue (Antigua and Barbuda, Bangladesh, Botswana, Burkina Faso, Cape Verde, The Republic of the Congo, Côte d'Ivoire, Djibouti, Gabon, Equatorial Guinea, Ethiopia, Ghana, Guinea, Holy See, Ireland, Lebanon, Lesotho, Liberia, Malawi, Maldives, Mali, Mauritania, Mongolia, Mozambique, Niger, Nigeria, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Somalia, Swaziland, Syrian Arab Republic, Timor-Leste and Turkmenistan).

29. The Committee drew the attention of these States parties to the fact that delays in reporting seriously hamper the implementation of the Convention in the States parties and the Committee in carrying out its function of monitoring such implementation. The Committee requested information on the progress made by these States parties regarding the fulfilment of their reporting obligations and on any obstacles that they might be facing in that respect. It also informed them that, according to rule 65 of its rules of procedure, the Committee might proceed with a review of the implementation of the Convention in the State party in the absence of a report, and that such review would be carried out on the basis of information that may be available to the Committee, including sources from outside the United Nations.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

30. At its forty-first and forty-second sessions, the Committee considered reports submitted by 14 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its forty-first session and it adopted the respective concluding observations:

Belgium	Second periodic report	CAT/C/BEL/2	CAT/C/BEL/CO/2
China	Fourth periodic report	CAT/C/CHN/4 and Corr.1	CAT/C/CHN/CO/4
Hong Kong		CAT/C/HKG/4	CAT/C/HKG/CO/4
Macao		CAT/C/MAC/4 and Corr.1-2	CAT/C/MAC/CO/4
Kazakhstan	Second periodic report	CAT/C/KAZ/2	CAT/C/KAZ/CO/2
Kenya	Initial report	CAT/C/KEN/1	CAT/C/KEN/CO/1
Lithuania	Second periodic report	CAT/C/LTU/2	CAT/C/LTU/CO/2
Montenegro	Initial report	CAT/C/MNE/1	CAT/C/MNE/CO/1
Serbia	Initial report	CAT/C/SRB/2 and Corr.1	CAT/C/SRB/CO/1

31. The following reports were before the Committee at its forty-second session and it adopted the following concluding observations:

Chad	Initial report	CAT/C/TCD/1	CAT/C/TCD/CO/1
Chile	Fifth periodic report	CAT/C/CHL/5	CAT/C/CHL/CO/5
Honduras	Initial report	CAT/C/HND/1	CAT/C/HND/CO/1
Israel	Fourth periodic report	CAT/C/ISR/4	CAT/C/ISR/CO/4
New Zealand	Fifth periodic report	CAT/C/NZL/5	CAT/C/NZL/CO/5
Nicaragua	Initial report	CAT/C/NIC/1	CAT/C/NIC/CO/1
Philippines	Second periodic report	CAT/C/PHL/2	CAT/C/PHL/CO/2

32. In accordance with rule 66 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its concluding observations.

33. Country rapporteurs and alternate rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex XII to the present report.

34. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

35. The text of concluding observations adopted by the Committee with respect to the above-mentioned reports submitted by States parties is reproduced below.

36. The Committee has been issuing lists of issues for periodic reports since 2004. This resulted from a request made to the Committee by representatives of the States parties at a meeting with Committee members. While the Committee understands States parties wish to have advance notice of the issues likely to be discussed during the dialogue, it nonetheless has to point out that the drafting of lists of issues has increased the Committee's workload substantially. This is particularly significant in a Committee with such a small membership.

37. Belgium

(1) The Committee considered the second periodic report of Belgium (CAT/C/BEL/2) at its 850th and 853rd meetings, held on 12 and 13 November 2008 (CAT/C/SR.850 and 853), and adopted, at its 860th meeting (CAT/C/SR.860), held on 19 November 2008, the following concluding observations.

A. Introduction

(2) The Committee welcomes the second periodic report of Belgium but regrets that the report was submitted four years late. The Committee expresses its appreciation for the extensive written replies to its list of issues (CAT/C/BEL/Q/2 and Add.1) as well as the very detailed additional information provided orally during the consideration of the report. Lastly, the Committee welcomes the constructive dialogue it enjoyed with the high-level delegation sent by the State party and thanks it for its frank and precise responses to the questions asked.

B. Positive aspects

(3) The Committee welcomes the progress made by the State party in the protection and promotion of human rights since its consideration of the State party's initial report in 2003 (CAT/C/52/Add.2). The Committee notes with satisfaction that, since its consideration of the initial report, the State party has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 17 June 2004 and signed the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the International Convention for the Protection of All Persons from

Enforced Disappearance on 13 December 2006 and 20 December 2006 respectively. The Committee encourages the State party to accede fully to those instruments.

(4) The Committee takes note with satisfaction of the adoption or entry into force of the following laws:

(a) Act of 12 January 2005 on principles governing the administration of prison establishments and the legal status of detainees;

(b) Act of 18 May 2006 prohibiting invocation of (a state of) necessity to justify torture;

(c) Act of 15 September 2006 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, which incorporates the subsidiary protection mechanism covering certain asylum-seekers who do not meet the criteria for the granting of refugee status but in respect of whom there are substantial grounds for believing that they would be in real danger of being subjected to "serious violations", such as the death penalty, execution, torture or inhuman or degrading treatment or punishment, if returned to their country of origin;

(d) Act of 15 May 2007 amending the Act of 1 October 1833 and the Act of 15 March 1874 concerning extradition, which enhances the protection of fundamental human rights during extradition procedures and expressly provides that extradition shall be denied when there are substantial grounds for believing that a flagrant miscarriage of justice may occur or has occurred or that the individual in question may be in danger of being subjected to torture or other inhuman or degrading treatment.

(5) The Committee likewise welcomes with satisfaction the following measures:

(a) The adoption of minimum standards for places of detention available to the police as well as the requirement that chronological deprivation of liberty registers be kept;

(b) The measures adopted following the tragic death of Semira Adamu, in particular the establishment of a commission to review the instructions relating to expulsion and the specific training provided to police officers responsible for carrying out deportations;

(c) The reform of the Council of State and the creation of the Aliens Litigation Council pursuant to the Act of 15 September 2006;

(d) The reopening of any criminal proceedings resulting in a conviction if the European Court of Human Rights subsequently rules that the convicted individual's basic rights were violated during the proceedings;

(e) The imposition of specific restrictions on the expulsion of aliens, in particular those contained in a ministerial directive of 7 July 2005 concerning situations in which aliens are not to be deported from Belgium if they can demonstrate lasting ties to the country;

(f) The Federal Action Plan 2004-2007 to combat domestic violence.

C. Subjects of concern and recommendations

Expulsion of aliens

(6) The Committee notes with concern the inadequate external monitoring of deportations in the State party by the Standing Committee on the Supervision of the Police Services (Committee P) and the General Inspectorate of the Federal and Local Police and the lack of monitoring of deportations of aliens by non-governmental organizations (NGOs), which do not have access to cells or the deportation zone (arts. 3 and 11).

The State party should ensure frequent, independent and effective monitoring, which would benefit all parties by helping to combat impunity. The Committee recommends in particular that the Belgian authorities adopt alternative measures aimed at enhancing monitoring, such as the use of videotaping and monitoring by civil society, especially NGOs.

Unaccompanied minors

(7) The Committee notes with satisfaction the creation within the Aliens Office of a special unit for unaccompanied minors with responsibility for processing their applications for residency. It also takes note of certain other activities, including the creation of specialized centres to deal with unaccompanied minors and the planned establishment of the Guardianship Service for Unaccompanied Minors (art. 11).

The Committee recommends that the State party accelerate its efforts to provide unaccompanied minors with assistance, accommodation and follow-up.

Effective recourse procedures in closed centres

(8) The Committee is concerned at the inadequate application of appeal procedures in the closed centres, although it notes that procedures for lodging complaints exist in theory. The Committee is likewise concerned by:

(a) The fact that it is virtually impossible for persons who have been deported to lodge a complaint;

(b) The difficulty of proving allegations because the circumstances of a deportation often mean that no third party - and thus no independent witness - present, as well as the difficulty of establishing the facts because the reports made by the deporting officers frequently refer to "resistance" on the part of the deportee, allegations that are difficult to corroborate, since the alien complainant, having been deported, is not present during the investigation;

(c) The fact that the criteria for admissibility currently in force, in particular the limit of five days beginning from the moment the alleged rights violation occurred for the filing of a written complaint are too restrictive and do not provide for suspension of the deportation or expulsion (art. 13).

The State party should establish an effective and transparent system for implementing the Convention at the domestic level and provide guarantees of independence and impartiality so that victims can exercise their right to lodge a complaint. The Committee recommends that the State party:

(a) Ensure that the persons concerned are provided with ample information and consider ways of allowing complainants to appeal from their country of origin;

(b) Review the criteria for admissibility, in particular with regard to the current five-day time limit;

(c) Ensure that reliable medical certificates are regularly prepared before and after deportation.

(9) While it notes that the decision of the Constitutional Court partially abrogates article 39/82 of the Act of 15 December 1980 on emergency remedies and the possibility of forced removal in the absence of any decision by the Aliens Litigation Council, the Committee remains concerned by the fact that the provisions of article 39/82 relating to the 24-hour time limit for the lodging of an emergency appeal are to remain in force until 30 June 2009 (art. 13).

The Committee recommends that the State party promptly adopt measures aimed at giving suspensive effect not only to emergency remedies but also to appeals filed by any alien against whom an expulsion order has been issued and who claims that he or she faces the risk of being subjected to torture in the country of return. The Committee, recalling the observation made in the decision of the Constitutional Court that time

limits must be reasonable, also recommends that the 24-hour time limit for the registering of an emergency appeal, which is not reasonable, be extended.

Monitoring of deported persons

(10) The Committee is concerned at information received from non-governmental sources with regard to the situation of certain deported individuals following their return to their country of origin. It notes with concern that the information provided by the State party regarding the monitoring and follow-up of those individuals and on guarantees of due process is insufficient, and that its compatibility with article 3 of the Convention cannot therefore be assessed. The Committee does, however, acknowledge that the State party did follow up certain cases through the intermediary of its diplomatic representatives abroad (art. 3).

The Committee recommends that the State party improve the monitoring of deported persons with a view to ensuring that no one may be removed, deported or extradited to a State where there is a serious risk that he or she might be subject to the death penalty, torture or other inhuman or degrading treatment or punishment.

Processing of complaints

(11) While it takes note of the explanations provided by the delegation of Belgium with regard to the independence of Committee P and welcomes the extensive investigations undertaken, the Committee regrets that many of the members of Committee P are police officers and individuals seconded from police services, which raises concerns as to the guarantees of independence to be expected from such an external oversight body, in particular with regard to the handling of complaints concerning police conduct and any disciplinary action taken against police officers. This problem has grown to the point that Committee P itself, in its annual report for 2006, stated that "police officers seem to receive extremely favourable treatment from the criminal justice system". The Committee is likewise concerned at the persistent inconsistencies between complainants' and police versions of the facts, and in particular that the laying of charges against complainants by the police may in fact be an attempt to cover up unacceptable police conduct (art. 13).

The State party should take adequate measures to guarantee the independence of Committee P by changing its membership. The Committee recommends that the State party ensure that whenever persons who have lodged complaints against the security forces are then charged with resisting the police or with similar offences, the cases should be systematically linked.

National institution

(12) The Committee regrets that, despite the recommendation made by a number of treaty bodies in their concluding observations, the State party has not yet established an independent national institution with a broad mandate for the promotion and protection of human rights, in accordance with the Principles relating to the status of national institutions (see General Assembly resolution 48/134) (art. 2).

The Committee recommends that the State party promptly decide on a timetable for the establishment of an independent national institution for the protection of fundamental rights in accordance with the Principles relating to the status of national institutions (see General Assembly resolution 48/134), also known as the Paris Principles.

Allegations of ill-treatment

(13) The Committee notes with concern that NGOs continue to submit reports alleging ill-treatment at the hands of the police, including arbitrary arrest, racist insults, refusal to follow up complaints, physical abuse and other inhuman or degrading treatment, in particular in the Bruxelles/Ixelles (5339) and Bruxelles Midi (5341) police districts. The

Committee is also concerned at the increase in the number of complaints of discrimination brought against the law enforcement authorities (art. 16).

> **The State party should take all necessary measures to combat effectively ill-treatment at the hands of the police, including treatment based on discrimination of any kind, and take appropriate steps to punish those responsible. The State party should also strengthen efforts to eliminate ill-treatment in the Bruxelles/Ixelles (5339) and Bruxelles Midi (5341) police districts and provide the Committee with detailed information on this matter in its next periodic report in 2012.**

Definition of torture

(14) While taking note of the explanation given by the State party's delegation that the definition of torture contained in article 417 bis of the Criminal Code is broader than that contained in the Convention, the Committee is still concerned that the definition contained in the Belgian Criminal Code does not explicitly include actions "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity", as defined in article 1 of the Convention (art. 1).

> **The State party should consider taking the necessary legislative steps to amend article 417 bis of the Criminal Code with a view to ensuring that all elements of the definition contained in article 1 of the Convention are included in the general definition set out in article 417 bis of the Belgian Criminal Code, as recommended by the Committee in paragraph 6 of its previous concluding observations (CAT/C/CR/30/6).**

Prevention of torture

(15) The Committee welcomes the entry into force on 30 May 2006 of the Police Service Code of Ethics, a central tenet of which is the obligation of the police services to respect and protect human rights and fundamental freedoms and which establishes strict conditions for the use of coercive measures and of force. The Committee nevertheless regrets that the Code does not explicitly prohibit torture. It notes that the Code contains several articles relating to the way in which the police must behave when dealing with individuals deprived of their liberty but remains concerned that it makes no mention of any sanctions to which police officials may be liable if they fail to meet their obligations (art. 11).

> **The State party should take appropriate steps to explicitly include the prohibition of torture in the Police Service Code of Ethics and ensure that police officers perform their duties with the full knowledge that torture is prohibited in any territory under the State party's jurisdiction. The Committee likewise recommends that the Code specify the sanctions to which police officers are liable if they fail to fulfil their obligations.**

Protection of minors

(16) While taking note of the amendment introduced by article 15 of the Act of 13 June 2006 which gives minors the right to legal counsel when being questioned by an investigating judge, the Committee is deeply concerned that the requirement that legal counsel or a trusted adult be present during questioning of minors is rarely respected (art. 11).

> **The Committee recommends that the State party implement the pilot project for the audio- and videotaping of the questioning of minors, but stresses that this initiative cannot replace the presence of a third party during hearings of minors, including minors who have witnessed or been the victims of certain offences. The State party should continue its efforts to ensure that minors have a lawyer and a trusted adult present at every phase of a proceeding, including during questioning by a police officer, whether or not the minor has been deprived of liberty.**

Administration of juvenile justice

(17) The Committee remains concerned that pursuant to article 38 of the Youth Protection Act of 8 April 1965, persons under the age of 18 can be tried as adults. Recalling the concluding observations adopted by the Committee on the Rights of the Child in 2002 (CRC/C/15/Add.178), the Committee is concerned that a holistic approach to the problem of juvenile crime, including with respect to prevention procedures and sanctions, has not been sufficiently taken into consideration by the State party (art. 11).

> **The Committee recommends that the State party establish a system of juvenile justice that fully integrates into its legislation and practice the provisions of the Convention on the Rights of the Child and that it ensure that persons under the age of 18 are not tried as adults.**

Prison overcrowding

(18) The Committee acknowledges the measures taken by the State party to address the problem of overcrowding in prisons, such as the building of new prisons and the use of alternatives to detention, but remains concerned by the poor conditions of detention in penal establishments. The Committee is particularly concerned at the inadequacy of internal inspections, the unsuitable and dilapidated buildings and the poor sanitary conditions. It is also concerned at the increase in the incidence of violence between inmates (arts. 11 and 16).

> **The Committee recommends that the State party take the necessary steps to ensure the earliest possible ratification of the Optional Protocol to the Convention and establish a national body responsible for conducting regular visits to places of detention with a view to preventing torture or any other cruel, inhuman or degrading treatment. It likewise recommends that the State party consider instituting alternative measures to detention rather than increasing prison capacity.**

Special individual security regime

(19) The Committee notes with satisfaction that pursuant to the Act on principles governing the administration of prison establishments and the legal status of detainees, adopted on 12 January 2005, only those detainees who pose a permanent security risk may, under certain legally prescribed conditions, be placed under an exceptional regime and welcomes the establishment of a legal framework for this regime that includes cumulative criteria for its application, a set procedure and a time limit. The Committee is concerned, however, that the right of detainees to appeal has not yet been established. The Committee is also concerned at allegations that the mandated procedure is not followed, that detainees are not able to challenge the appropriateness of such measures and that hearings are conducted without an interpreter or lawyer present (arts. 11 and 13).

> **The Committee recommends that the State party ensure that article 118, paragraph 10, of the Act of 12 January 2008 enters into force immediately, since abuses can occur if detainees subjected to this type of measure have no right of appeal. Furthermore, the Committee recommends that the State party allow independent and impartial monitoring of such measures, for example through an oversight mechanism established outside the prison and through monitoring by civil society.**

Register of detainees

(20) The Committee notes with satisfaction that, pursuant to the Act of 25 April 2007, "any deprivation of liberty shall be entered in a register of detainees" but wonders whether this procedure is being implemented in practice. The Committee is likewise concerned that there is no provision for noting an arrested individual's physical condition, in particular any signs of injury, in the register (art. 11).

> **The State party should take appropriate measures to ensure the effective implementation of the Act of 25 April 2007, systematically endeavour, through investigation, monitoring and inspections, to verify**

compliance with the obligation to keep a register of detainees and report on the results of these measures in its next periodic report. The Committee also recommends that the State party require that any signs of injury be recorded in the register immediately upon the detainee's arrival at the police station.

(21) While it welcomes the fact that the Act of 25 April 2007 marks a step forward in the area of administrative detention, the Committee nevertheless regrets that the Act does not recognize the right of detainees to legal assistance and that, with regard to judicial detention, the draft Code of Criminal Procedure mandates access to legal assistance only eight hours after detention, even though it is during the period immediately following detention that there is the greatest risk of intimidation and ill-treatment (arts. 2 and 11).

The State party should ensure that access to a lawyer immediately following administrative or judicial detention is guaranteed, as the Committee has stated in its previous recommendations (CAT/C/CR/30/6).

Conditional release

(22) The Committee is concerned at the significant decrease in the granting of conditional release. Furthermore, prison day-release permits or prison leave, which are prerequisites for conditional release, also seem more difficult to obtain than in the past (art. 11).

The State party should take effective measures to facilitate the granting of conditional release.

Committal of mentally ill offenders

(23) The Committee is concerned at the conditions of detention of psychiatric detainees in the Belgian prison system, which it has already criticized in its previous recommendations (CAT/C/CR/30/6, para. 7), in particular the lack of qualified staff, the dilapidated facilities, inadequate care, the absence of ongoing treatment and medical examinations, and the marked deterioration of conditions during strikes by prison personnel. The Committee is also concerned at the long waiting period for the transfer of detainees from psychiatric wings to social protection institutions, which, owing to overcrowding in such institutions, can last from 8 to 15 months (arts. 11 and 16).

The Committee recommends that the State party take specific measures to remedy the problems caused by: the poor health care provided to detainees; the overcrowding of psychiatric wings; the housing of some detainees among the general prison population owing to a lack of space in the psychiatric wings; the dilapidated facilities; and the lack of activities and specialized care for detainees in the psychiatric wings. The Committee also recommends that the State party ensure that adequate specialized treatment be provided.

Violence against women and girls

(24) While it welcomes measures adopted by the State party to combat and eliminate violence against women, such as the adoption of the Federal Action Plan 2004-2007 to combat domestic violence, the Committee notes with concern the lack of any coordinated national strategy or programme to combat all forms of violence against women and girls. The Committee is likewise concerned at the persistence of corporal punishment of children within the family and the fact that this practice is not prohibited by law (arts. 2 and 16).

The Committee recommends that the State party adopt and implement a coherent and comprehensive national strategy for the elimination of violence against women and girls that includes legal, educational, financial and social components. It also requests the State party to strengthen its cooperation with NGOs working in the area of violence against women. The State party should take the necessary steps to include provisions banning corporal punishment of children within the family in its legislation. The State party should guarantee women and child victims of violence access to complaint mechanisms, punish the

perpetrators of such acts in an appropriate manner and facilitate victims' physical and psychological rehabilitation.

Trafficking in persons

(25) While it welcomes the State party's ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Committee is concerned that:

(a) The State party is not doing enough to address the root causes of trafficking in women;

(b) The resources allocated to that problem are still inadequate and that there is no coordinated comprehensive plan at the national level;

(c) There are gaps in international cooperation aimed at bringing those responsible for trafficking to justice;

(d) The fact that Belgium grants specific residence permits only to those victims of human trafficking who cooperate with the judicial authorities (arts. 2 and 16).

The Committee recommends that the State party ratify the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005, and continue to take all appropriate measures to combat all forms of trafficking in women and children. In this connection, the Committee encourages the State party to:

(a) Focus not only on criminal justice measures and the prosecution of traffickers but also on the protection and rehabilitation of victims;

(b) Increase its efforts to address the root causes of trafficking in persons;

(c) Strengthen international cooperation, in particular with countries of origin, trafficking and transit, in order to ensure successful prosecutions;

(d) Assist victims through counselling and reintegration measures;

(e) Ensure that adequate human and financial resources are allocated to policies and programmes in this area;

(f) Ensure that adequate support services are provided to victims, including those who do not cooperate with the authorities;

(g) Consider granting victims of human trafficking temporary residence permits.

Training

(26) The Committee notes that although the State party has increased the duration of the training provided to prison staff and police and to the officials responsible for deportations, it is still too brief to ensure that they receive adequate multidisciplinary training in the field of human rights. It also regrets that little information has been provided on follow-up and evaluation of this training and that no information has been provided on the results of the training provided to the officials concerned on the effectiveness of such training in reducing the number of cases of torture and ill-treatment (art. 10). The Committee is likewise concerned that the training offered on the prohibition of torture and inhuman or degrading treatment is inadequate, as the Committee noted in its previous concluding observations (art. 10).

The State party should take the following measures:

(a) Strengthen efforts to provide multidisciplinary training to qualify personnel in the field of human rights by including in particular thorough information on the prohibition against torture in vocational training programmes intended for prison and police personnei, as recommended in paragraph 7 of the Committee's previous concluding observations (CAT/C/CR/30/6);

(b) Provide all personnel with appropriate specialized training in the identification of signs of torture and ill-treatment. The Committee recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) form an integral part of training for physicians;

(c) Develop and implement a mechanism for evaluating the effectiveness of training and teaching programmes as well as their effectiveness in reducing the number of cases of torture, violence and ill-treatment.

(27) The State party is encouraged to ratify the Optional Protocol to the Convention.

(28) The Committee invites the State party to ratify the principal United Nations human rights instruments to which it is not yet a party, in particular the Convention on the Rights of Persons with Disabilities, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee likewise invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(29) The State party is encouraged to widely disseminate its reports to the Committee as well as the Committee's concluding observations, in the national languages, by means of official websites, the media and NGOS. The State party is also encouraged to distribute its reports to national human rights NGOs before submitting them to the Committee.

(30) The Committee invites the State party to submit its core document in accordance with the requirements in the harmonized guidelines on reporting to international human rights treaty bodies (HRI/GEN/2/Rev.5).

(31) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 7, 11, 16, 20 and 27 above.

(32) The Committee has decided to request the State party to submit its third periodic report no later than 21 November 2012.

38. China

(1) The Committee considered the fourth periodic report of China (CAT/C/CHN/4) at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), and adopted, at its 864th meeting, on 21 November 2008 (CAT/C/SR.864), the concluding observations as set out below.

A. Introduction

(2) The Committee welcomes the fourth periodic report of China, which, while generally following the Committee's guidelines for reporting, lacks adequate statistical data and practical information on the implementation of the provisions of the Convention.

(3) The Committee notes with appreciation the extensive written response provided to the list of issues (CAT/C/CHN/Q/4). The Committee also appreciates the size and diverse expertise of the State party delegation, the

comprehensive detailed responses to many oral questions and the additional information provided by representatives of the State party to questions raised during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the ongoing reform of the State party's legal framework with the adoption of the following acts:

(a) The 2001 Marriage Law explicitly prohibiting domestic violence;

(b) The 2007 amended Law on Lawyers, guaranteeing lawyers' right to meet with criminal suspects;

(c) The 2005 Law on Administrative Punishments for Public Order and Security, which requires inter alia that security organs shall adhere to principles of respect for human rights guarantees and which, in particular, according to the Representative of the State party, "has, for the first time established in national law the exclusion rule of illegal evidence".

(5) The Committee appreciates the promulgation of the following new regulations:

(a) The amendment, since 2005, of the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs and the Procedural Provisions for the Handling of Criminal Cases by Public Security Organs;

(b) Issuance by the Ministry of Justice (14 February 2006) of "Six prohibitions on people's prison police" and "Six prohibitions for RTL guards"; and by the Supreme People's Procuratorate (26 July 2006) of "Regulations on filing cases standard on infringing rights by dereliction of duty", focused on preventing abuses in detention and investigating abuses;

(c) Reforms of the death penalty system aimed at creating a system of review that could ensure that wrongful convictions are overturned before executions are carried out;

(d) The prohibition of corporal punishment of children in schools and judicial processes.

(6) The Committee welcomes the ongoing efforts made by the State party to combat torture practices, including the adoption of administrative regulations prohibiting the use of torture to obtain confessions, the provision of nationwide training of the police and the introduction of audio and video recording in interrogation rooms, notwithstanding the lack of adequate methods of enforcement for the administrative regulations and the lack of changes to criminal or criminal procedure laws.

(7) The Committee welcomes the accession of China to:

(a) The International Covenant on Economic, Social and Cultural Rights, in 2001;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2002; and

(c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2008.

(8) The Committee also notes with interest that China has invited and received a visit from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, which was made in November-December 2005. The Committee further notes that the Government of China has also received the Working Group on Arbitrary Detention twice.

(9) The Committee notes the statement by Wang Zhenchuan, the Deputy Procurator-General of the Supreme People's Procuratorate in November 2006 that "nearly every wrongful verdict in recent years … involved … illegal interrogation". In this regard, the Committee notes with interest the Special Rapporteur on the question of torture's observation that "the growing willingness of officials and scholars to acknowledge China's torture problem is a significant step forward". Efforts beginning with the publication of *The Crime of Tortured Confession* in the late 1990s have acknowledged the torture problem, inter alia by addressing wrongful convictions, weak investigations, lack of professionalism in the police, and confessions extorted by torture, and by the resumption by the Supreme People's Court of its authority to review all death penalty cases (see E/CN.4/2006/6/Add.6, paras. 46-51).

(10) The Committee also welcomes the efforts made by non-governmental organizations, national and international, to provide it with relevant reports and information, and encourages the State party to strengthen further its cooperation with them with regard to the implementation of the provisions of the Convention.

C. Subjects of concern and recommendations

Widespread torture and ill-treatment and insufficient safeguards during detention

(11) Notwithstanding the State party's efforts to address the practice of torture and related problems in the criminal justice system, the Committee remains deeply concerned about the continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, the Committee notes with concern the lack of legal safeguards for detainees, including:

(a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police detention without charge for up to 37 days or in some cases for longer periods;

(b) Absence of systematic registration of all detainees and failure to keep records of all periods of pretrial detention;

(c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members;

(d) Continued reliance on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects, as in the case of Yang Chunlin. Furthermore, while the Committee appreciates that the Supreme Court has issued several decisions to prevent the use of confessions obtained under torture as evidence before the courts, Chinese Criminal procedure law still does not contain an explicit prohibition of such practice, as required by article 15 of the Convention;

(e) The lack of an effective independent monitoring mechanism on the situation of detainees (arts. 2, 11 and 15).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country.

As part of this, the State party should implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation are registered.

The State party should take the measures necessary to ensure that, both in legislation and in practice, statements that have been made under torture are not invoked as evidence in any proceedings, except against

a person accused of torture, in accordance with the provisions of the Convention. The State party should review all cases in which persons were convicted on the basis of coerced confessions with a view to releasing those who were wrongly convicted.

The State party should establish consistent and comprehensive standards for independent monitoring mechanisms of all places of detention, ensuring that any body established, at the local or the national level, has a strong and impartial mandate and adequate resources.

Conditions of detention and deaths in custody

(12) While the Committee takes note of the information from the State party on conditions of detention in prisons, it remains concerned about reports of abuses in custody, including the high number of deaths, possibly related to torture or ill-treatment, and about the lack of investigation into these abuses and deaths in custody. While the Committee notes that the Special Rapporteur on the question of torture has found the availability of medical care in the detention facilities he visited to be generally satisfactory (E/CN.4/2006/6/Add.6, para. 77), it also notes with concern new information provided about inter alia the lack of treatment for drug users and people living with HIV/AIDS and regrets the lack of statistical data on the health of detainees (art. 11).

The State party should take effective measures to keep under systematic review all places of detention, including existing and available health services. Furthermore, the State party should take prompt measures to ensure that all instances of deaths in custody are independently investigated and that those responsible for such deaths resulting from torture, ill-treatment or wilful negligence are prosecuted. The Committee would appreciate a report on the outcome of such investigations, where completed, and about what penalties and remedies were provided.

Administrative detention, including "re-education through labour"

(13) The Committee reiterates its previous recommendation to the State party to consider abolishing all forms of administration detention (A/55/44, para. 127). The Committee remains concerned at the extended use of all forms of administrative detention, including "re-education through labour", for individuals who have never had their case tried in court, nor the possibility of challenging their administrative detention. It is also concerned with the failure to investigate allegations of torture and other ill-treatment in "re-education through labour" (RTL) facilities, in particular against members of certain religious and ethnic minority groups. While the State party has indicated that the RTL system has recently been reformed and that further reform of the system is currently being envisaged, the Committee is concerned with repeated delays, despite calls from Chinese scholars to abolish the system (arts. 2 and 11).

The State party should immediately abolish all forms of administrative detention, including "re-education through labour". The State party should provide more information, including current statistics, on those currently subject to administrative detention, the reasons for their detention, the means of challenging such detention and the safeguards put in place to prevent torture and ill-treatment in RTL facilities.

Secret detention centres

(14) The Committee is concerned by allegations that secret detention facilities, including the so-called "black jails", exist and are used to detain petitioners, such as those seeking to come to the capital, such as Wang Guilan. Detention in such facilities constitutes per se disappearance. Detainees are allegedly deprived of fundamental legal safeguards, including an oversight mechanism in regard to their treatment and review procedures with respect to their detention. The Committee is also concerned over other unacknowledged detention facilities such as those where prominent disappeared persons have been reportedly confined (arts. 2 and 11).

The State party should ensure that no one is detained in any secret detention facility. Detaining persons in such conditions constitutes, per se, a violation of the Convention. The State party should investigate, disclose

the existence of any such facilities and the authority under which they have been established and the manner in which detainees are treated, and make reparations to the victims of enforced disappearances where appropriate.

Main obstacles to the effective implementation of the Convention

(15) The Committee identified three overarching problems that impact all other issues raised by the Committee in the list of issues and during the oral presentations: (a) the 1988 Law on the Preservation of State Secrets in the People's Republic of China; (b) the reported harassment of lawyers and human rights defenders; and (c) the abuses carried out by unaccountable "thugs" who use physical violence against specific defenders but enjoy de facto immunity. Collectively, these problems stand in the way of ensuring the legal safeguards that the Committee generally recommends to all States parties to the Convention as necessary for the prevention of torture.

1. State secrets law

(16) While taking note of the oral information from the State party on the conditions of application of the 1988 Law on the Preservation of State Secrets in the People's Republic of China, the Committee expressed grave concern over the use of this law which severely undermines the availability of information about torture, criminal justice and related issues. The broad application of this law raises a range of issues relating to the application of the Convention in the State party:

(a) This Law prevents the disclosure of crucial information that would enable the Committee to identify possible patterns of abuse requiring attention, such as disaggregated statistical information on detainees in all forms of detention and custody and ill-treatment in the State party, information on groups and entities deemed to be "hostile organizations", "minority splittist organizations", "hostile religious organizations", "reactionary sects", as well as basic information on places of detention, information about the "circumstances of prisoners of great influence", violations of the law or codes of conduct by public security organs, information on matters inside prisons;

(b) This Law provides that the determination of whether a piece of information is a State secret lies with the public body producing this information;

(c) This Law prevents any public process of determination as to whether a matter is a State secret and the possibility of appeal before an independent tribunal;

(d) The classification of a case falling under the State Secrets law allows officials to deny detainees access to lawyers, a fundamental safeguard for preventing torture, and such denial appears to be in contradiction with the 2007 amended Lawyers Law (arts. 2 and 19).

The State party should review its legislation on State secrets with a view to ensuring that information, including statistics, relevant to the assessment of the State party's compliance with the provisions of the Convention throughout its territory, including in the Special Administrative Regions, is available to the Committee.

The State party should provide information on the criteria used to establish that a piece of information is a State secret and on the number of cases falling under the purview of the legislation on State secrets.

The State party should ensure that the determination as to whether a matter is a State secret can be appealed before an independent tribunal.

The State party should ensure that every suspect is afforded the right to have prompt access to an independent lawyer, where possible of their own choosing, including in cases involving "State secrets".

2. Data collection

(17) Despite its previous conclusions and recommendations that the State party provide the Committee with statistical information (A/55/44, para. 130), the Committee regrets that this was not provided. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement personnel, as well as on detention conditions, abuses by public officials, administrative detention, death penalty cases, and violence against women, ethnic and religious minorities severely hampers the identification of possible patterns of abuse requiring attention (arts. 2 and 19).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, disaggregated by gender, ethnicity, age, geographical region and type and location of place of deprivation of liberty, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, detention conditions, abuses by public officials, administrative detention, death penalty cases, and violence against women, ethnic and religious minorities.

3. Harassment of defence lawyers

(18) The Committee is concerned about information received according to which article 306 of the Penal Code, along with article 39 of the Criminal Procedure Law, allowing prosecutors to arrest lawyers on grounds of "perjury" or "false testimony", has been used to intimidate some defence lawyers. The Committee also notes with great concern reported harassment of lawyers, such as Teng Biao and Gao Zhisheng, who have tried to offer their services to petitioners, human rights defenders and other dissidents, and reports that this harassment was conducted by unaccountable personnel alleged to be hired by State authorities (art. 2).

The State party should abolish any legal provisions which undermine the independence of lawyers and should investigate all attacks against lawyers and petitioners, with a view to prosecution as appropriate.

The State party should take immediate action to investigate acts of intimidation and other ways of impeding the independent work of lawyers.

4. Harassment and violence against human rights defenders and petitioners

(19) The Committee expresses its concern at information on a pattern of harassment and violence against human rights defenders, such as Hu Jia. Such actions severely hamper the capacity of civil-society monitoring groups to function, and do not encourage information to be shared, investigations to occur and cases to be brought to the authorities. Despite the State party's assurance that no unofficial personnel have been hired by public authorities to harass lawyers or petitioners, the Committee is concerned at the persistent reports on attempts to curb the activities of human rights activists, such as Li Heping. This includes violence by unofficial personnel allegedly engaged by public authorities to harass lawyers and petitioners, the use of different forms of administrative detention, such as "residential surveillance", re-education through labour and secret places of detention. The Committee is concerned by allegations that unofficial personnel have not been held accountable for such behaviour (arts. 12 and 16).

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts.

The State party should abolish the use of unofficial personnel to harass human rights defenders, including lawyers and petitioners.

Lack of investigations

(20) The Committee is deeply concerned by the lack of an effective mechanism for investigating allegations of torture as required by the Convention. As the Committee articulated during the oral presentations, there are serious conflicts of interest with the role played by the Office of the Procuratorate which is charged with investigating allegations of torture by government officials and private actors acting with the acquiescence or consent of government officials, which may lead to ineffective and partial investigations (arts. 2, 11 and 12).

> **The State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment.**

1989 Democracy Movement

(21) Despite repeated requests from groups of relatives of persons killed, arrested or disappeared on or following the 4 June 1989 Beijing suppression of the Democracy Movement, the Committee is concerned about the lack of investigations into these events, the failure to inform family members of the fate of their relatives, and regrets that those responsible for excessive use of force have not faced any sanctions, administrative or criminal (art. 12).

> **The State party should conduct a full and impartial investigation into the suppression of the Democracy Movement in Beijing in June 1989, provide information on the persons who are still detained from that period, inform the family members of their findings, offer apologies and reparation as appropriate and prosecute those found responsible for excessive use of force, torture and other ill-treatment.**

National, ethnic or religious minorities and other vulnerable groups

(22) The Committee is greatly concerned by the allegations of targeted torture, ill-treatment, and disappearances directed against national, ethnic, religious minorities and other vulnerable groups in China, among them Tibetans, Uighurs, and Falun Gong practitioners. In addition, the return of border-crossers and refugees from the Democratic People's Republic of Korea is also an area of concern for the Committee with regard to vulnerable groups, as articulated below.

1. Events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties: widespread reported excessive use of force and other abuses

(23) The Committee notes with great concern the reports received on the recent crackdown in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties in the State party, which has deepened a climate of fear and further inhibits accountability. These reports follow longstanding reports of torture, beatings, shackling and other abusive treatment, in particular of Tibetan monks and nuns, at the hands of public officials, public security and State security, as well as paramilitary and even unofficial personnel at the instigation or with the acquiescence or consent of public officials. Notwithstanding the numbers provided by the State party on persons arrested and those sentenced to imprisonment in the aftermath of the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties, the Committee regrets the lack of further information on these persons. In particular, the State party reported that 1,231 suspects "have redeemed themselves and been released after receiving education and administrative punishment", but has provided no further information on these cases or their treatment. In particular, the Committee expresses its concern at:

(a) The large number of persons detained or arrested in the aftermath of the March 2008 demonstrations and related events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties in Gansu, Suchuan and Qinghai provinces, and the reported lack of restraint with which persons were treated, based on numerous allegations and credible reports made available to the Committee;

(b) The failure to investigate the deaths resulting from indiscriminate firing by the police into crowds of reportedly largely peaceful demonstrators in Kardze county, Ngaba county and Lhasa;

(c) The failure to conduct independent and impartial investigations into allegations that some of the large number of persons detained or arrested have been subjected to torture or cruel, inhuman or degrading treatment;

(d) The failure to allow independent and impartial investigators into the region;

(e) The consistent allegations that some of those arrested could not notify their relatives, did not have prompt access to an independent doctor, nor to an independent lawyer, that lawyers offering to represent them were warned and otherwise deterred from providing that legal assistance, and that the speeded up trials of 69 Tibetans led to them being reportedly sentenced in a summary manner;

(f) The large number of persons who have been arrested, but whose current whereabouts remain unknown and which the State party has been unable to clarify despite written and oral requests from the Committee (list of issues, question 2(l), CAT/C/CHN/Q/4) (arts. 2, 11 and 12).

The State party should conduct a thorough and independent inquiry into the reported excessive use of force, including against peaceful demonstrators and notably monks, in Kardze county, Ngaba county and Lhasa.

The State party should conduct prompt, impartial and effective investigations into all allegations of torture and ill-treatment and should ensure that those responsible are prosecuted.

The State party should ensure that all persons who were detained or arrested in the aftermath of the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties have prompt access to an independent lawyer and independent medical care and the right to lodge complaints in a confidential atmosphere, free from reprisal or harassment.

The State party should adopt all necessary measures to prohibit and prevent enforced disappearances, to shed light on the fate of missing persons, including Genden Choekyi Nyima, and prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention.

The State party should conduct investigations or inquests into the deaths, including deaths in custody, of persons killed in the March 2008 events in the Tibetan Autonomous Region and neighbouring Tibetan prefectures and counties.

2. Discrimination and violence against persons belonging to national, ethnic or religious minorities

(24) The Committee is concerned with allegations raised in relation to acts of discrimination against and ill-treatment of persons of ethnic minority groups, in particular the Tibetans and the Uighurs, such as Ablikim Abdureyim, and with the alleged reluctance on the part of the police and authorities to conduct prompt, impartial and effective investigations into such acts of discrimination or violence (arts. 2, 12 and 16).

Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, by ensuring prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including acts directed against persons belonging to ethnic minorities. The State party should prosecute and punish those responsible for such acts and ensure implementation of positive measures of prevention and protection.

The State party should give prompt consideration to expanding the recruitment of persons belonging to ethnic minorities into law enforcement.

3. Allegations concerning Falun Gong practitioners

(25) While noting the State party's information about the 2006 Temporary Regulation on Human Organ Transplants and the 2007 Human Organ Transplant Ordinance, the Committee takes cognizance of the allegations presented to the Special Rapporteur on the question of torture who has noted that an increase in organ transplant operations coincides with "the beginning of the persecution of (Falun Gong practitioners)" and who asked for " a full explanation of the source of organ transplants" which could clarify the discrepancy and disprove the allegation of organ harvesting (A/HRC/7/3/Add.1). The Committee is further concerned with information received that Falun Gong practitioners have been extensively subjected to torture and ill-treatment in prisons and that some of them have been used for organ transplants (arts. 12 and 16).

> **The State party should immediately conduct or commission an independent investigation of the claims that some Falun Gong practitioners have been subjected to torture and used for organ transplants and take measures, as appropriate, to ensure that those responsible for such abuses are prosecuted and punished.**

4. Non-refoulement and risk of torture

(26) The Committee is greatly concerned by allegations that many individuals have been forcibly returned to the Democratic People's Republic of Korea, without any examination of the merits of each individual case, and subsequently been subjected to torture or cruel, inhuman or degrading treatment or punishment by the authorities. The Committee notes with concern that these individuals are referred to by the State party as "illegal immigrants" or "snakeheads" and that such labels presume that these individuals are not deserving of any protection. Similarly, persons extradited to and from neighbouring States do not benefit from legal safeguards against return despite the risk of torture. The Committee is further concerned by the failure of the State party to clarify how it includes in its national laws or practice the prohibition on returning a person to a country where he or she faces a substantial risk of torture, and hence how the State party ensures that its obligations under article 3 of the Convention are fulfilled (art. 3).

> **Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.**
>
> **When determining the applicability of its obligations under article 3 of the Convention, the State party should establish an adequate screening process for status determination in order to determine whether persons subject to return may face a substantial risk of torture, particularly in view of the fact that it is reportedly a criminal offence to depart unofficially from the Democratic People's Republic of Korea, and should provide the Office of the United Nations High Commissioner for Refugees with access to the border region and persons of concern. In the light of the large numbers of citizens of the above State who have crossed into China, the State party needs to be more active in ensuring that the obligations of article 3 are fully met. The State party should also ensure that adequate judicial mechanisms for the review of decisions are in place and sufficient legal defence available for each person subject to extradition, and ensure effective post-return monitoring arrangements.**
>
> **The State party should provide data on the number of persons expelled or returned to neighbouring States.**
>
> **The State party should pursue its efforts to adopt appropriate legislation to fully incorporate into domestic law its obligation under article 3 of the Convention, thereby preventing any persons from being expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subject to torture.**

Violence against women

(27) While welcoming the adoption of the 2001 Marriage Law explicitly prohibiting domestic violence and the formulation of the Chinese Women Development Programme (2001-2010) prohibiting all forms of violence against women, the Committee notes the concluding observations of the Committee on the Elimination of All Forms of

Discrimination against Women and joins it in being concerned by the lack of legislation prohibiting all forms of violence against women, among them marital rape, and providing effective remedies for victims (art. 16).

> **The State party should pursue its efforts to prevent and punish gender-based violence and, in particular, adopt legislation explicitly prohibiting all forms of violence against women and providing access to justice for victims.**

(28) The Committee notes the State party's efforts to ensure that female prisoners are supervised by female officers. However, the Committee is concerned about reported incidents of violence against women in detention centres, including against Tibetan nuns in detention, and regrets the lack of information on the number of complaints and the measures taken to prevent torture and ill-treatment of women in places of detention (arts. 12, 13 and 16).

> **The State party should ensure that procedures are in place to monitor the behaviour of law enforcement officials. The State party should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible, and providing redress and compensation to the victims.**

Use of violence in the implementation of the population policy

(29) The Committee notes again with concern the lack of investigation into the alleged use of coercive and violent measures to implement the population policy (A/55/44, para. 122). While taking note of the information provided by the delegation of the State party that local officials in Lingyi City have been held accountable for using such coercive and violent measures, the Committee is concerned about the inadequacy of the sanctions actually taken against these and other officials who have engaged in similar conduct. It is equally concerned by the fact that human rights defenders, such as Chen Guangcheng, who have provided legal advice to victims and publicly denounced the use of coercive and violent measures to implement the population policy, have been harassed by the authorities, as have his lawyers (arts. 12 and 16).

> **The State party should implement the population policy in full compliance with the relevant provisions of the Convention and prosecute those responsible for resorting to coercive and violent measures in implementing such policy, in particular against women belonging to ethnic minority groups.**

Compensation and rehabilitation

(30) While noting the information provided about victims' rights to compensation envisaged in the Law on State Compensation, the Committee notes with concern the extremely small numbers of cases in which individuals have received such compensation. The Committee expresses its concern about the limited measures for the rehabilitation of victims of torture, including sexual violence, trafficking, domestic violence and ill-treatment (art. 14).

> **The State party should ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes are provided to all victims of torture, including sexual violence, trafficking, domestic violence and ill-treatment, including medical and psychological assistance.**

Impunity and appropriate penalties for acts of torture

(31) The Committee is deeply concerned that allegations of torture and/or ill-treatment committed by law enforcement personnel are seldom investigated and prosecuted. The Committee notes with great concern that some instances of torture involving acts which are considered as "relatively minor offences" can lead to only disciplinary or administrative punishment (arts. 2, 4 and 12).

> **The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially. It should also ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.**

Definition of torture

(32) While noting the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are criminally punishable in China, the Committee reiterates its previous conclusions and recommendations (A/55/44, para. 123) that the State party has not incorporated in its domestic law a definition of torture that fully complies with the definition contained in the Convention.

(33) The Committee is concerned that the provisions relating to torture refer only to physical abuse and do not include the infliction of severe mental pain or suffering. It is also concerned that article 247 of the Criminal Law, article 43 of the Criminal Procedure Law and the Supreme People's Procuratorate Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Criminal Cases restrict the prohibited practice of torture to the actions of judicial officers and officers of an institution of confinement and do not cover acts by "other persons acting in an official capacity", including those acts that result from instigation, consent or acquiescence of a public official. Moreover, these provisions do not address the use of torture for purposes other than to extract confessions (art. 1).

> **The State party should include in its legislation a definition of torture that covers all the elements contained in article 1 of the Convention, including discrimination of any kind. The State party should ensure that persons who are not judicial officers and officers of an institution of confinement, but who act in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture. The State party should also ensure that its legislation prohibits the use of torture for all intents and purposes.**

Death penalty cases and conditions of detention on death row

(34) While noting that the State party has provided data on the large numbers of detainees serving death sentences, death sentences with a two-year reprieve, sentences for life imprisonment and imprisonment above five years, the Committee regrets that such data is not disaggregated according to the type of sentence and that specific data on death sentences is not publicly available according to article 3 of the Regulation on State Secrets and the specific scope of each level of secrets in the work of the People's Procuratorates issued by the Supreme People's Procuratorate. The Committee expresses concern at the conditions of detention of convicted prisoners on death row, in particular the use of shackles for 24 hours a day, amounting to cruel, inhuman or degrading treatment. Moreover the Committee is concerned about the questions raised by the United Nations Special Rapporteur on the question of torture (A/HRC/7/3/Add.1), on the removal of organs from persons sentenced to death without free and informed consent (arts. 11 and 16).

> **The State party should review its legislation with a view to restricting the imposition of the death penalty. The State party should provide specific data on death penalty cases and ensure that all persons on death row are afforded the protection provided by the Convention.**

Forced medical treatment

(35) While noting that article 18 of the Criminal Law allows a mentally ill person who has committed a crime but is not to bear any criminal responsibility for it to be given compulsory medical treatment by the authorities, the Committee also notes with concern that this provision has been misused to detain some people in psychiatric hospitals for reasons other than medical. The case of Hu Jing was raised by the Committee, but the State party has not provided a satisfactory answer (art. 11).

> **The State party should take measures to ensure that no one is involuntarily placed in psychiatric institutions for reasons other than medical. Where hospitalization is required for medical reasons, the State party should ensure that it is decided only upon the advice of independent psychiatric experts and that such decisions can be appealed.**

Training of law-enforcement and medical personnel

(36) While welcoming the information provided by the delegation of the State party concerning its efforts to provide human rights training to law-enforcement and judicial officers, as well as grassroots officials, on the prevention of torture when they start their posts, when they are promoted and when they are posted in the field, the information provided does not clarify whether this training has been effective. The Committee regrets the insufficient level of practical training with regard to the provisions of the Convention for law enforcement officers. The Committee also notes with concern the lack of specific training to detect signs of torture and ill-treatment for medical personnel in detention facilities (art. 10).

> **The State party should intensify its efforts to reinforce and expand existing training programmes, including with non-governmental organisations, on the absolute prohibition of torture for law enforcement officers at all levels.**
>
> **The State party should also ensure adequate training for medical personnel to detect signs of torture and ill-treatment and integrate the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment) in such training.**
>
> **In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training programmes on instances of torture and ill-treatment.**

Measures against terrorism

(37) The Committee appreciates the information on the importance given by the State party to anti-terrorist work and the information on their attempts to strengthen anti-terrorism legislation and other relevant measures, including international cooperation against terrorism. Notwithstanding this information, the Committee notes with concern that all rights in the Convention are not always respected in all circumstances.

> **The Committee urges the State party to ensure that any measure to combat terrorism is in accordance with Security Council resolutions 1373 (2001) and 1566 (2004), which require that anti-terrorist measures be carried out with full respect for, inter alia, international human rights law, including the Convention and the absolute principle of non-refoulement.**

(38) The Committee encourages the State party to implement the recommendations contained in the report of the Special Rapporteur on the question of torture on his visit in November-December 2005 (A/CN.4/2006/6/Add.6) and to invite him back. The Committee also encourages the State party to invite other Special Rapporteurs.

(39) The Committee also encourages the State party to consider making the declaration under articles 21 and 22 of the Convention.

(40) The Committee reiterates its recommendation that the State party consider withdrawing its reservations and declarations to the Convention (A/55/44, para. 124).

(41) The State party should consider ratifying the major United Nations human rights treaties to which it is not yet a party, namely the International Covenant on Civil and Political Rights and its two protocols, the Optional Protocol to the Convention against Torture, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention for the Protection of All Persons from Enforced Disappearance. The State party should also consider ratifying the Statute of the International Criminal Court.

(42) The State party should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

(43) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(44) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 11, 15, 17 and 23 above.

(45) The State party is invited to submit its next periodic report, which will be considered as its fifth periodic report, by 21 November 2012.

39. Hong Kong

(1) The Committee against Torture considered, at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), the report of the Hong Kong Special Administrative Region (HKSAR), forming part of the fourth periodic report of China (CAT/C/HKG/4). It adopted, at its 864th meeting on 21 November 2008 (CAT/C/SR.864), the following concluding observations:

A. Introduction

(2) The Committee welcomes the submission of the report of the HKSAR, forming part of the fourth periodic report of China, as well as the written replies to the list of issues (CAT/C/HKG/Q/4/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken for the implementation of the Convention.

B. Positive aspects

(3) The Committee welcomes:

(a) The Hong Kong Bill of Rights Ordinance (Cap. 383), which incorporates into HKSAR's law the provisions of the International Covenant on Civil and Political Rights;

(b) The enactment of the Independent Police Complaints Council Ordinance on 12 July 2008, providing that the Council will start operating as a statutory body in 2009;

(c) The new Guidelines on Searching of Detained Persons introduced and applied by the Police since 1 July 2008, aimed at ensuring that searches are conducted respecting the privacy and dignity of individuals; and

(d) The measures taken to tackle domestic violence, including the strengthening of services to assist victims and the passing of the Domestic Violence (Amendment) Bill in June 2008.

(4) The Committee notes that HKSAR is taking the necessary steps to give effect to the provisions of the Optional Protocol on the sale of children, child prostitution and child pornography in order to extend its application to HKSAR.

C. Main issues of concern and recommendations

Definition of torture

(5) The Committee takes note of the HKSAR's explanation with respect to the limitation of the term "public official", in Section 2 (1) of the Crimes (Torture) Ordinance, to those professionals normally involved in the custody or treatment of

persons deprived of their liberty. Nevertheless, the Committee reiterates its concern expressed in the previous concluding observations, that the way Section 2(1) of the Crimes (Torture) Ordinance is currently drafted is too restrictive and may create in practice loopholes preventing effective prosecution of torture.

> **The HKSAR should consider adopting a more inclusive definition of the term "public official" in the definition of torture as to clearly include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity. The Committee further recommends that HKSAR ensure that the definition comprises all the elements contained in article 1, including discrimination of any kind.**

(6) The Committee notes the HKSAR's position that the "defence of lawful authority, justification or excuse" contained in Section 3 (4) of the Crimes (Torture) Ordinance simply serves to give effect to the second sentence of article 1, paragraph 1 of the Convention. However, the Committee - reiterating its concern expressed in the previous concluding observations - emphasizes that the Convention does not authorize any possible defense for acts of torture.

> **The HKSAR should consider abolishing the defense contained in section 3 (4) of the Crimes (Torture) Ordinance; to this end, the State party could, for instance, incorporate article 1 of the Convention into its Basic Law, as it has done with article 7 of the International Covenant on Civil and Political Rights.**

Refugees and non-return to torture

(7) While the Committee appreciates the cooperation of HKSAR authorities with UNHCR to ensure respect for the principle of non-refoulement and protection of refugees and asylum-seekers, it is still concerned that there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure. The Committee is also concerned that there are no plans to extend to HKSAR the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

> **The HKSAR should:**
>
> **(a) Incorporate the provisions contained in article 3 of the Convention under the Crimes (Torture) Ordinance;**
>
> **(b) Consider adopting a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly, when determining the applicability of its obligations under article 3 of the Convention, the merits of each individual case;**
>
> **(c) Ensure that adequate mechanisms for the review of the decision are in place for each person subject to removal, expulsion or extradition;**
>
> **(d) Increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized;**
>
> **(e) Ensure effective post-return monitoring arrangements; and**
>
> **(f) Consider the extension of the 1951 Refugee Convention and the 1967 Protocol to Hong Kong.**

Transfer of fugitive offenders/sentenced persons

(8) The Committee notes the discussion between HKSAR and the mainland of China with respect to arrangement for the transfer of fugitive offenders and sentenced persons as well as that "death penalty safeguards" have been included in the draft arrangement.

If resorting to the use of "death penalty safeguards" in the surrender of fugitive offenders/sentenced persons, the HKSAR should provide the Committee, in its next report, with information on the number of cases where "surrender" or removals subject to safeguards or guarantees have occurred in the reporting period; with information on the HKSAR's minimum requirements for these safeguards; the measures of subsequent monitoring undertaken by HKSAR in such cases as well as the legal enforceability of these safeguards.

Training

(9) The Committee welcomes that the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol) is distributed among relevant professionals. While noting the information that there is a general awareness among health-care professionals in relation to signs that are suggestive of abuse or even torture, the Committee stresses the importance of more specific training programmes for medical doctors and other health professionals to detect and document signs of torture, as well as training in gender sensitive treatment in judicial and medical institutions.

The HKSAR should ensure that health-care professionals are equipped with the necessary training and information to recognize and detect signs and features that may suggest the occurrence of torture, as well as to provide gender sensitive treatment in legal and medical institutions.

Strip search and body cavity search

(10) The Committee notes the new Police guidelines in force from 1 July 2008 on the handling of searches of detainees in police custody. While welcoming that, under this revised procedure, a designated officer has to justify the scope and conduct of a search based on objective and identifiable criteria, the Committee is concerned at:

(a) The Police Commissioner's determination that every person in police custody has to be searched every time he or she enters a detention facility maintained by the police, making body searches automatic for all individuals in police custody, irrespective of whether or not there is any objective justification thereto;

(b) Allegations of abusive strip searches, including in facilities of the Immigration Department and of the Correctional Services Department; and

(c) Allegations of the routine practice of conducting body cavity searches of those entering in prison, despite the fact that Rule 9 of the Hong Kong prison rules only provides for the possibility of conducting such searches.

The HKSAR should:

(a) Ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with article 16 of the Convention; an independent mechanism to monitor those searches, upon request of the detainee, should also be provided;

(b) Establish precise and strict guidelines regulating the strip searches conducted by all law-enforcement officials, including those from the Immigration and Correctional Services Department; if these guidelines are already in place, they should be strictly abided by and their observance consistently monitored; records of searches should be made and all abuses committed should be thoroughly investigated and, if substantiated, punished; and

(c) Seek alternate methods to body cavity search for routine screening of prisoners; if such search has to be conducted, it must be only as a last resort and should be performed by trained health personnel and with due regard for the individual's privacy and dignity.

Police operations

(11) The Committee welcomes the information provided by the delegation that the Police has reviewed and revised, in late 2007, the guidelines for the conduct of officers engaging in police operations in the context of prostitution-related offences. However, the Committee is concerned at the allegations of routine police abuses of persons during such operations.

> **HKSAR authorities should thoroughly investigate all allegations of abuses committed during police operations in the context of prostitution-related offences which, if substantiated, should be appropriately prosecuted and punished. The HKSAR should also tackle, including through training and awareness-raising activities, all existing attitudes suggesting that such abuses may be condoned.**

Independent investigation of police misconduct

(12) The Committee welcomes the enactment of the Independent Police Complaints Council (IPCC) Ordinance on 12 July 2008 converting the IPCC into a statutory body, as previously recommended by the Committee. However, the Committee is concerned that, while the statutory framework has reinforced the independent role of the IPCC, the latter only has advisory and oversight functions to monitor and review the activity of the Complaints Against Police Office (CAPO), which is still - in fact - the body responsible for handling and investigating complaints of police misconduct. In this respect, the Committee also notes with concern the information that - despite the considerable number of reportable complaints filed with the CAPO - a small percentage of them were considered as substantiated and only in one case an officer has been prosecuted and convicted of a criminal offence.

> **The HKSAR should continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct. This body should be equipped with the necessary human and financial resources and have the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints, in line with the requirements of article 12 of the Convention.**

Domestic violence

(13) The Committee, while noting with appreciation the efforts taken by HKSAR to eradicate domestic violence, is concerned at the high incidence of domestic violence in HKSAR.

> **The HKSAR should:**
>
> **(a) Thoroughly investigate all allegations of domestic violence which, if substantiated, should be appropriately prosecuted and punished;**
>
> **(b) Strengthen its efforts to address domestic violence through legislative, policy and social measures;**
>
> **(c) Develop national public information and awareness-raising campaigns and stimulate broader public discussions in order to address attitudes and stereotypes that may lead to violence against women; and**
>
> **(d) Provide further information on this issue in its next periodic report, including on the progress obtained through the forthcoming Enhanced Central Domestic Violence Database.**

(14) The Committee encourages the HKSAR to complete the process to give effect to the provisions of the Optional Protocol on the sale of children, child prostitution and child pornography, so to allow the extension of its application to HKSAR.

(15) The HKSAR should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

(16) The Committee invites the HKSAR to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(17) The Committee requests that the HKSAR provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 10 and 12 above.

(18) The HKSAR is invited to submit its next periodic report, which will be included in China's fifth periodic report, by 21 November 2012.

40. Macao

A. Introduction

(1) The Committee against Torture considered the fourth periodic report of China with respect to the Macao Special Administrative Region (Macao SAR) (CAT/C/MAC/4) at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), and adopted, at its 864th meeting, on 21 November 2008 (CAT/C/SR.864), the following concluding observations.

B. Positive aspects

(2) The Committee welcomes the submission of the report of Macao SAR, included in the fourth periodic report of the State party China. It also welcomes the written replies to the list of issues (CAT/C/MAC/Q/4/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken for the implementation of the Convention.

(3) The Committee notes with appreciation:

(a) The new Law 6/2008 on the Fight Against Trafficking in Persons, which define and criminalize trafficking in accordance with international standards;

(b) Law 1/2004, establishing the Legal Framework on the Recognition and Loss of Refugee Status, which set up a Commission for Refugees to assess asylum claims in cooperation with UNHCR; and

(c) The creation, in 2005, of the Commission for Disciplinary Control of the Security Forces and Services of Macao, which has, inter alia, the mandate to consider complaints lodged by individuals who consider that their rights have been infringed.

C. Main issues of concern and recommendations

Definition and criminalization of torture

(4) The Committee takes note of the Macao SAR's explanation with respect to the term "public official" contained in article 234 read in conjunction with article 235 of the Criminal Code. Nonetheless, the Committee is concerned that the restriction mentioned in article 234 (1) of the Criminal Code regarding the scope of the crime to the mentioned public officials is not fully compliant with the definition of torture contained in article 1, paragraph 1, of the Convention.

The Macao SAR should adopt a definition of the term "public official" fully in line with article 1, paragraph 1, of the Convention, so as to include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity. The Committee further recommends that Macao SAR consider using a wording of the definition of torture similar to that used in the Convention so as to ensure that all elements contained in article 1, including discrimination of any kind, are covered in the definition.

(5) The Committee takes note of the difference between the crimes provided for by the Criminal Code in articles 234 (torture) and 236 (serious torture) as illustrated in the Macao SAR's report and replies to the list of issues. The Committee is concerned that this distinction may lead to the perception that there are more and less serious crimes of torture, a distinction which not only is wrong but can create obstacles to effective prosecution of all cases of torture.

The Macao SAR should define and criminalize torture in its Criminal Code in full conformity with article 1 and 4 of the Convention. To this end, the Committee recommends that the crime of torture constitute a single offence subject to the relevant aggravating circumstances applicable to the crime of torture.

Jurisdiction

(6) The Committee is concerned that while Macao SAR's jurisdiction can always be established over acts of serious torture committed abroad (art. 236 of the criminal code), the exercise of extra territorial jurisdiction with respect to other torture offences (art. 234 of the criminal code) is conditional to the requirement of double criminality.

The Macao SAR should establish its jurisdiction for all acts of torture committed abroad, in accordance with article 5, paragraph 2, of the Convention.

Training

(7) The Committee welcomes information about the training given to police officers, prison wardens and other law-enforcement officials regarding human rights and the prohibition of torture, but is concerned that that there appears to be no special training programmes for health professionals aiming at identifying and documenting cases of torture and provide rehabilitation for the victims.

The Macao SAR should ensure that health care professionals are equipped with the necessary training to recognize and detect features and signs that may suggest the occurrence of torture. To this end, the Macao SAR should, inter alia, further promote, disseminate and use the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol).

Solitary confinement

(8) The Committee is concerned that children as young as 12 can be potentially subjected to solitary confinement to up to one month.

The Macao SAR should ensure that persons under the age of 18 should not be subjected to solitary confinement; if applied, it should be limited to very exceptional cases and closely monitored. The Macao SAR should also ensure that solitary confinement remains in all cases a measure of limited duration and of last resort, in accordance with international standards.

Trafficking in persons

(9) While noting the measures taken in order to reduce trafficking, including new legislation, as well as the intensification in investigation and prosecution of this crime, the Committee is still concerned at the incidence of trafficking in Macao SAR, notably in women and children, especially for the purpose of sexual exploitation.

> **The Macao SAR should continue to take measures to combat trafficking in persons, notably women and children. To this end, it should:**
>
> **(a) Investigate all cases of trafficking and strengthen its efforts to prosecute and punish the perpetrators;**
>
> **(b) Increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized; and**
>
> **(c) Strengthen cooperation with the authorities of countries from or to which individuals are trafficked in order to combat this practice; such cooperation should include multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible of trafficking as well a strategies for supporting the victims.**

(10) The Macao SAR should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

(11) The Committee invites the Macao SAR to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(12) The Committee requests that the Macao SAR provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 8 and 9 above.

(13) The Macao SAR is invited to submit its next periodic report, which will be included in China's fifth periodic report, by 21 November 2012.

41. Kazakhstan

(1) The Committee considered the second periodic report of Kazakhstan (CAT/C/KAZ/2) at its 842nd and 845th meetings (CAT/C/SR.842 and CAT/C/SR.845), held on 6 and 7 November 2008, and adopted at its 858th meeting held on 18 November 2008 (CAT/C/SR.858), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report of Kazakhstan and the responses to the list of issues (CAT/C/KAZ/Q/2/Add.1) submitted by the State party. The Committee also wishes to welcome the open and constructive dialogue held with the high-level delegation.

B. Positive aspects

(3) The Committee welcomes the recent ratification of the following international instruments:

(a) The Optional Protocol to the Convention against Torture;

(b) The declaration made under articles 21 and 22 of the Convention against Torture in 2008 recognizing the competence of the Committee to receive and consider State and individual communications;

(c) The International Covenant on Civil and Political Rights in 2006 and the signature of the first Optional Protocol thereto in 2007;

(d) The International Covenant on Economic, Social and Cultural Rights in January 2006;

(e) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2008.

(4) The Committee welcomes the recent legislative measures taken by the State party since the consideration of its previous report, namely:

(a) Enactment of articles 347-1 and 107 in the Criminal Code, addressing some of the elements in the definition of torture and cruel treatment and making it a specific criminal offence;

(b) Amendment of article 116 of the Code of Criminal Procedure making statements obtained through the use of torture inadmissible as evidence;

(c) Legislative amendments in 2003 making trafficking in human beings an offence under the Criminal Code and strengthening the power to investigate, prosecute, and convict traffickers.

(5) The Committee also notes with satisfaction the following developments:

(a) Establishment of the Office of the Human Rights Commissioner (Ombudsman) in 2002;

(b) Establishment of a Central Public Monitoring Commission in 2005 and regional independent public monitoring commissions in 2004, with the authority to inspect detention facilities;

(c) Reforms of the criminal justice system, decriminalization of a number of offences and the introduction of probation and community service and other forms of alternative sentencing, leading to a decrease in the total population incarcerated and the improvement of conditions of detention;

(d) Preparation and distribution to all detainees of a pamphlet informing them of their rights, and public information on the reforms being carried out in correctional institutions;

(e) Adoption of a national programme on combating violence against women in the police system at the regional level;

(f) Development of a programme for the training of internal affairs officers in international human rights norms, aimed at the improvement of their professional skills, legal thinking and legal culture;

(g) Reduction of the scope of the application of the death penalty, extension of the moratorium on death penalty in 2004, and amendment of the Criminal Code to introduce life imprisonment instead of capital punishment.

C. Main subjects of concern and recommendations

Definition of torture

(6) While the Committee acknowledges the efforts made by the State party to enact new legislation incorporating the definition of torture of the Convention into domestic law, it remains concerned that the definition in the new article 347-1

of the Criminal Code does not contain all the elements of article 1 of the Convention, restricts the prohibition of torture to the actions of "public officials" and does not cover acts by "other persons acting in an official capacity", including those acts that result from instigation, consent or acquiescence of a public official. The Committee notes further with concern that the definition of article 347-1 of the Criminal Code excludes physical and mental suffering caused as a result of "legitimate acts" on the part of officials (art. 1).

The State party should bring its definition of torture fully into conformity with article 1 of the Convention, so as to ensure that all public officials can be prosecuted under article 347-1 of the Criminal Code and to make a distinction between acts of torture committed by or at instigation of or with consent or acquiescence of public official or any other person acting in an official capacity. The State party should also ensure that only pain or suffering arising from, inherent in or incidental to lawful sanctions are excluded from the definition.

Torture and ill-treatment

(7) The Committee is concerned about consistent allegations concerning the frequent use of torture and ill-treatment, including threat of sexual abuse and rape, committed by law enforcement officers, often to extract "voluntary confessions" or information to be used as evidence in criminal proceedings, so as to meet the success criterion determined by the number of crimes solved (arts. 2, 11 and 12).

The State party should apply a zero-tolerance approach to the persistent problem of torture and cruel, inhuman or degrading treatment or punishment, in particular:

(a) Publicly and unambiguously condemn practices of torture in all its forms, directing this especially to police and prison staff, accompanied by a clear warning that any person committing such acts or otherwise complicit or participating in torture or other ill-treatment be held responsible before the law for such acts and subject to penalties proportional with the gravity of their crime;

(b) Establish and promote an effective mechanism for receiving complaints of sexual violence, including in custodial facilities, and ensure that law enforcement personnel are trained on the absolute prohibition of sexual violence and rape in custody, as a form of torture, as well as on receiving such type of complaints;

(c) Change the performance evaluation system of investigators so as to eliminate any incentive for obtaining confessions and take additional measures in the field of human rights education of police officers.

(8) The Committee is particularly concerned about allegations of torture or other ill-treatment in temporary detention isolation facilities (IVSs) and in investigation isolation facilities (SIZOs) under the jurisdiction of the Ministry of Internal Affairs or National Security Committee (NSC), especially in the context of national and regional security and anti-terrorism operations conducted by the NSC. The Committee notes with particular concern reports that the NSC has used counter-terrorism operations to target vulnerable groups or groups perceived as a threat to national and regional security, such as asylum-seekers and members or suspected members of banned Islamic groups or Islamist parties (art. 2).

The State party should transfer detention and investigation facilities currently under the jurisdiction of the Ministry of Internal Affairs or National Security Committee to the Ministry of Justice and guarantee that Public Monitoring Commissions have the unlimited right to conduct unannounced visits to these facilities at their own initiative. The State party should also ensure that the fight against terrorism does not lead to breaches of the Convention nor impose undue hardship on vulnerable groups.

Insufficient safeguards governing initial period of detention

(9) The Committee is deeply concerned at allegations that torture and ill-treatment of suspects commonly takes place during the period between apprehension and the formal registration of detainees at the police station, thus providing them with insufficient legal safeguards. The Committee notes in particular:

(a) The failure to acknowledge and record the actual time of apprehension of a detainee, as well as unrecorded periods of pretrial detention and investigation;

(b) Restricted access to lawyers and independent doctors and failure to notify detainees fully of their rights at the time of apprehension;

(c) The failure to introduce, through the legal reform of July 2008, habeas corpus procedure in full conformity with international standards (art. 2).

The State party should promptly implement effective measures to ensure that a person is not subject to de facto unacknowledged detention and that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, from the actual moment of deprivation of liberty, the right to access a lawyer and an independent medical examination, to inform a relative and to be informed of their rights, including as to the charges laid against them, as well as being promptly presented to a judge. The State party should ensure that all detained persons are guaranteed the ability to challenge effectively and expeditiously the lawfulness of their detention through habeas corpus.

(10) The Committee expresses concern that the right of an arrested person to notify relatives of his/her whereabouts may be postponed for 72 hours from the time of detention, in the case of so-called "exceptional circumstances" (art. 2).

The State party should amend article 138 of the Code of Criminal Procedure so as to ensure that no exceptional circumstances may be invoked for postponing the exercise of the right of a detainee to inform a relative of his/her whereabouts.

(11) The Committee notes with concern the Government's acknowledgement of frequent violations of the Code of Criminal Procedure by State party officials as regards the conduct of an interrogation within a 24-hour period, detention prior to the institution of criminal proceedings, notification of relatives of the suspect or accused person of that person's detention within 24 hours, and the right to counsel. The Committee is also concerned that most of the rules and instructions of the Ministry of Interior, the Prosecutor's Office and especially the National Security Committee are classified as "for internal use only" and are not in the realm of public documents. These rules leave many issues to the discretion of the officials, which results in claims that, in practice, detainees are not always afforded the rights of access to fundamental safeguards (art. 2).

The State party should ensure that all rules and instructions with regard to the custody, detention and interrogation of persons subjected to any forms of arrest or detention are made public. The State party should further ensure that every detainee can exercise the right to access a lawyer, an independent doctor and contact a family member to ensure effective protection from torture and ill-treatment from the moment of apprehension.

(12) The Committee notes with concern reports that law enforcement bodies sometimes use illegal investigation methods during interrogations of minors, such as threats, blackmailing and sometimes even physical abuse. Such interrogations are allegedly often conducted in the absence of the parents or teacher of the minor, although their presence is required by law. The Committee is further concerned at reports that juveniles may be held in pretrial detention for prolonged periods and that they are often not granted the right to receive relatives during that period (arts. 2 and 11).

The State party should increase its efforts to bring legislation and practice as regards the arrest, detention and interrogation of juvenile offenders fully in line with internationally adopted principles. The State party should, inter alia, ensure training of law enforcement personnel to raise their professional qualification in working with juveniles, ensure that deprivation of liberty, including pretrial detention, is the exception and is used for the shortest time possible and develop and implement alternatives to deprivation of liberty.

(13) The Committee is concerned that article 14 of the Code of Criminal Procedure provides for forced placement of suspects and defendants at the stage of pretrial investigation in medical institutions in order to conduct a forensic psychiatric expert evaluation. The Committee notes with further concern that the grounds for making such a decision are subjective and that the law fails to regulate the maximum duration of forced placement into a medical institution, as well as to guarantee the right to be informed of and to challenge methods of medical treatment or intervention (art. 2).

The State party should amend the Code of Criminal Procedure so as to ensure that compulsory placement of suspects and defendants at the stage of pretrial investigation into medical facilities to conduct forensic psychiatric expert evaluation must be pursuant to a court decision and based on objective criteria. The State party should also ensure that the duration of such placement is limited by law and that suspects and defendants have the right to be informed of and to challenge methods of medical treatment or intervention.

Non-refoulement

(14) The Committee is concerned at the lack of a legislative framework regulating expulsion, refoulement and extradition. Even if fewer extraditions have been reported since 2005, the Committee is concerned at the fact that the State party's current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture. In particular, the Committee notes with concern allegations that the Minsk Convention on Legal Assistance for Persons from the Commonwealth of Independent States (CIS) does not protect CIS citizens who might have valid claims for refugee status from refoulement (arts. 3 and 8).

The State party should adopt a legislative framework regulating expulsion, refoulement and extradition in fulfilment of its obligation under article 3 of the Convention. The State party should ensure that priority is given to the provisions of the Convention over any less protective bilateral or multilateral agreements on extradition and guarantee that persons whose application for asylum have been rejected can lodge an effective appeal. The State party should also ensure that its obligations under article 3 of the Convention are fully implemented whenever a person is subjected to expulsion, refoulement and extradition.

(15) The Committee is concerned at credible reports that individuals have not been afforded the full protection provided for by article 3 of the Convention in relation to expulsion, return or deportation to neighbouring countries in the name of regional security, including the fight against terrorism. The Committee is particularly concerned at allegations of forcible return of asylum-seekers from Uzbekistan and from China and the unknown conditions, treatment and whereabouts of persons returned following their arrival in the receiving country (art. 3).

The State party should ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture and that persons whose applications for asylum have been rejected can lodge an effective appeal with suspensive effect. The State party should also provide the Committee with statistical data, disaggregated by country of origin, about the number of persons who requested asylum, the status of the determination on those requests, and the number of persons subjected to expulsion, refoulement and extradition.

(16) The Committee is concerned at the existence of a bilateral agreement between Kazakhstan and the United States of America whereby United States nationals present in the territory of Kazakhstan cannot be transferred to the International Criminal Court to be tried for war crimes or crimes against humanity (art. 9).

The State party should take appropriate measures to review the terms of this agreement which prevents the transfer of United States nationals from the territory of Kazakhstan to the International Criminal Court, in accordance with the provisions of the Convention. The State party should also consider ratifying the Rome Statute of the International Criminal Court.

Appropriate penalties

(17) The Committee expresses concern that sentences of those convicted under Part 1 of article 347-1 of the Criminal Code are not commensurate with the gravity of the offence of torture as required by the Convention (art. 4).

The State party should amend Part 1 of article 347-1 of the Criminal Code to ensure that all punishment for acts of torture are at a level commensurate with the gravity of the crime, in accordance with the requirements of the Convention. Suspected perpetrators should, as a rule, be subject to suspension or reassignment during the process of investigation. Perpetrators subjected to disciplinary penalties should not be permitted to remain on their posts.

(18) The Committee is also concerned that despite the criminalization of torture in 2002 in a separate article of the Criminal Code, it appears that when prosecuted, law enforcement officials continue to be charged with article 308 or 347 of the Criminal Code ("Excess of authority or official power" or "Coercion to make a confession" respectively) (art. 7).

The State party should ensure that all acts of torture are prosecuted under the relevant article of the Criminal Code and that they are not considered as crimes of minor or moderate gravity and sentenced as such. The State party should also ensure that continuous training is mandatory for all sitting judges, prosecutors and lawyers to ensure implementation of new laws and amendments.

Universal jurisdiction

(19) The Committee is concerned that the State party can only establish its jurisdiction over acts of torture committed abroad by its nationals when the alleged offender is present in its territory or when the State party where the offence was committed apply a punishment for such acts of five years at least. In this respect, the Committee is concerned that this may lead to impunity when the country where the offence is committed is not a party to the Convention, or does not have a specific offence of torture in its legislation, or sanctions it with penalties of less than five years (art. 5).

In order to avoid impunity, the State party should consider the double criminality requirement for the crime of torture and apply the *aut dedere aut judicare* principle when an alleged offender of acts of torture committed abroad is present in its territory, in accordance with article 5, paragraph 2, of the Convention.

Training of personnel

(20) The Committee regrets the paucity of information provided by the State party on training of law enforcement officials, penitentiary staff and medical personnel regarding the provisions of the Convention (art. 10).

The State party should provide detailed information on the training provided to all law enforcement personnel and prison's staff specifically on the provisions of the Convention and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The State party should also provide information on specific training provided to its medical personnel dealing with detainees on how to identify signs of torture and ill-treatment in accordance with international standards, as outlined in the Istanbul Protocol. In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on cases of torture and ill-treatment and provide information about gender specific trainings.

Detention and places of deprivation of liberty

(21) The Committee welcomes the successful reform of much of the Kazakh penitentiary system through the adoption of programmes conducted in close cooperation with international and national organizations as well as the enactment of new laws and regulations. It further notes that this reform resulted in a decrease of the rate of pretrial detention, an increased use of alternative sanctions to imprisonment, more humane conditions of detention, and a marked improvement in the conditions of detention in post-conviction detention facilities. However, the Committee remains concerned at:

(a) The deterioration of prison conditions and stagnation in the implementation of penal reforms since 2006;

(b) Persistent reports of abuse in custody;

(c) Poor conditions of detention and persistent overcrowding in detention facilities;

(d) Excessive use of isolation with regards to pretrial detainees and prisoners and lack of regulation of the frequency of such isolation;

(e) Instances of group self-mutilation by prisoners reportedly as a form of protest for ill-treatments;

(f) Lack of access to independent medical personnel in pretrial detention centres and the reported failure to register signs of torture and ill-treatment or to accept detainee's claims of torture and ill-treatment as the basis for an independent medical examination;

(g) Persistent high incidence of death in custody, in particular in pretrial detention (e.g. the case of the former KNB General Zhomart Mazhrenov) some of which are alleged to have followed torture or ill-treatment (art. 11).

The State party should:

(a) Adopt a programme for further development of the penal correction system similar to the one for the period 2004-2006m in order to bring the system into full conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners;

(b) Continue to train specialists in the penitentiary system and ensure that all persons in contact with detainees are familiar with international standards in the field of human rights protection and the treatment of prisoners;

(c) Reduce overcrowding of places of detention, including through the building of new detention facilities and the application of alternative measures to imprisonment, as provided by the law;

(d) Limit the use of isolation as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review;

(e) Identify reasons leading prisoners to committing such desperate acts as self-mutilation and provide appropriate remedies;

(f) Establish a health service independent from the Ministry of Internal Affairs and Ministry of Justice to conduct examinations of detainees upon arrest and release, routinely and at their request, and ensure that judges deal with evidence of torture and ill-treatment of detainees and order independent medical examinations or return cases for further investigation; and

(g) Ensure that all instances of death in custody are promptly, impartially and effectively investigated and that those found responsible for any deaths resulting from torture, ill-treatment or wilful negligence leading to any of these deaths are prosecuted.

Independent monitoring of places of detention

(22) While welcoming the creation in 2004 of the Central Public Monitoring Commission and in 2005 of regional independent public monitoring commissions with the power to inspect detention facilities, the Committee remains concerned that their access to IVSs is neither automatic nor guaranteed and that their access to medical institutions has yet to be considered. Furthermore, it has been reported that the commissions have not been granted the right to make unannounced visits to detention facilities, that they are not always given unimpeded and private access to detainees and prisoners, and that some inmates have been subjected to ill-treatment after having reported to the commissions' members (arts. 2 and 11).

The State party should guarantee that the commissions have the unrestricted right to conduct unannounced visits to all places of detention in the country at their own initiative, including medical institutions, and it should ensure that detainees who report to commissions' members are not subjected to any form of reprisal. The State party should also speedily establish or designate a national preventive mechanism for the prevention of torture and take all necessary measures to ensure its independence, in accordance with the provisions of the Optional Protocol of the Convention.

(23) The Committee welcomes the creation of the Human Rights Commissioner (Ombudsman) in 2002 with a broad mandate and notably the competence to consider communications of human rights violations and to conduct visits of places of deprivation of liberty. The Committee notes however with concern that the ombudsman's competencies are substantially limited and that it lacks independence due to the fact that it does not have its own budget. The Committee notes with further concern that the mandate of the Human Rights Commissioner does not empower it to investigate action taken by the Prosecutor's office (arts. 2, 11, 13).

The State party should transform the Human Rights Commissioner into a full-fledged national human rights institution, operating on the basis of a law adopted by Parliament, with adequate human, financial and other resources and in conformity with the Paris Principles.

Prompt and impartial investigation

(24) The Committee notes with concern that the preliminary examinations of reports and complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force, and consequently do not lead to prompt and impartial examinations. The Committee notes with further concern that the lengthy period for preliminary examination of torture complaints, which can last up to two months, may prevent timely documentation of evidence (art. 12).

The State party should adopt measures to ensure in practice prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those responsible, including law enforcement officials and others. Such investigations should be undertaken by a fully independent body.

Independence of the judiciary

(25) While noting with satisfaction the introduction of many fundamental legislative amendments, the Committee remains concerned about allegations, as reported by the Special Rapporteur on the independence of judges and lawyers in 2005(see E/CN.4/2005/60/Add.2), of a lack of independence of judges since the designation of *oblast* and *rayon* judges rests entirely with the President (art. 2).

The Committee reiterates its previous recommendation (A/56/44, para. 129 (e)) that the State party should guarantee the full independence and impartiality of the judiciary, inter alia, by guaranteeing separation of power.

(26) While welcoming the adoption of a recent legal amendment transferring the power of issuing arrest warrants to courts solely, the Committee expresses concern, however, at the preeminent role performed by the Procuracy. The Committee reiterates the concerns expressed in its previous concluding observations (A/56/44, para. 128(c)) regarding the insufficient level of independence and effectiveness of the Procurator, in particular due to its dual responsibility for prosecution and oversight of proper conduct of investigations and failure to initiate and conduct prompt, impartial and effective investigations into allegations of torture and ill-treatment (arts. 2 and 12).

The State party should, as a matter of priority, pursue its efforts to reform the Procuracy, in particular by amending article 16(2) of the Constitution, its Criminal Code and its Criminal Procedure Code so as to reduce the procurator's dominating role throughout the judicial process and secure a fairer balance between the respective roles of the prosecutor, the defence counsel and the judge. The State party should establish effective and independent oversight mechanisms to ensure prompt, impartial and effective investigations into all reported allegations of torture and ill-treatment, and legal prosecution and punishment of those found guilty.

(27) The Committee notes with concern the report by the Special Rapporteur on the independence of judges and lawyers that defence lawyers lack adequate legal training and have very limited powers to collect evidence, which conspires to hamper their capacity to counterbalance the powers of the Prosecutor and impact on the judicial process. The Committee notes with further concern allegations that the procedure of appointing a lawyer lacks transparency and independence (arts. 2 and 7).

The Committee reiterates its previous recommendation (A/56/44, para. 129(f)) that the State party should take measures to permit defence counsel to gather evidence and to be involved in the case from the very start of the detention period. The State party should also guarantee the independence and quality of State-funded legal aid and continue to improve the level of legal education and introduce continuous legal education and training so as to raise the level of professionalism of lawyers.

Compensation and rehabilitation

(28) While welcoming the information provided by the delegation that victims of torture have the possibility to be compensated, the Committee is concerned, nevertheless, at the lack of examples of cases in which the individual received such compensation, including medical or psychosocial rehabilitation.

The State party should provide compensation, redress and rehabilitation to victims, including the means for as full rehabilitation as possible, and provide such assistance in practice.

Evidence obtained through torture

(29) While welcoming the assurance given by the delegation that judges reject such evidence in court proceedings, the Committee notes however with grave concern reports that judges often ignore the complaints of torture and ill-treatment, do not order independent medical investigations, and often proceed with the trials, therefore not respecting the principle of non-admissibility of such evidence in every instance (art. 15).

As recommended in the previous concluding observations of the Committee (A/56/44, para. 129(d)), the State party should take immediate steps to ensure that in practice evidence obtained by torture may not be invoked as evidence in any proceedings. The State party should review cases of convictions based on

confessions that may have been obtained through torture or ill-treatment, and ensure adequate compensation to victims and prosecution of those responsible.

Violence against women

(30) The Committee expresses it concern at the prevalence of violence against women in Kazakhstan, in particular domestic violence. The Committee notes that a draft law on domestic violence is being elaborated but it expresses concern that its adoption has been delayed. The Committee notes the lack of information about prosecutions of persons in connection with cases of violence against women (arts. 2, 7 and 16).

> **The State party should ensure protection of women by speedily enacting the draft law on domestic violence and adopting measures to prevent in practice such violence. The State party should cooperate with non-governmental crisis centres for women and provide for protection of victims, access to medical, social and legal services and temporary accommodation. Perpetrators should also be punished in accordance with the gravity of the act of torture or ill-treatment.**

Trafficking in human beings

(31) While noting with satisfaction legislative measures taken in the field of trafficking in human beings and the adoption of a National Plan of Action on Trafficking for 2006-2008, the Committee remains concerned at the prevalence of the phenomenon in the State party (arts. 2, 7, 12 and 16).

> **As recommended by the Committee on the Elimination of Discrimination against Women in 2007 (CEDAW/C/KAZ/CO/2, para. 18), the State party should ensure that legislation on trafficking is fully enforced and that the National Plan of Action is fully implemented. The State party should also continue its efforts to investigate, prosecute, convict and punish persons found responsible, including government officials complicit in trafficking.**

Data Collection

(32) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on the incidence of trafficking and sexual violence and on the number of prosecutions of persons in this connection. The Committee notes also the insufficient information on the training provided to law enforcement officials as regards the provisions of the Convention.

> **The State party should provide detailed statistical data in its next periodic report, disaggregated by gender, ethnicity or nationality, age, geographical region and type and location of place of deprivation of liberty, on complaints related to cases of torture and other ill-treatment, including those rejected by the courts, as well as related investigations, prosecutions and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims. The State party should also provide further information on the incidence of trafficking and sexual violence, as well as on training provided to all State's officials regarding the provisions of the Convention.**

(33) The State party is encouraged to consider becoming a party to the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities. The State party is also encouraged to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(34) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(35) The State party is encouraged to disseminate widely the reports it submitted to the Committee, its replies to the list of issues and the concluding observations of the Committee, in all appropriate languages, through official websites, the media and non-governmental organizations.

(36) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 9, 18 and 29 above.

(37) The State party is invited to submit its next periodic report, which will be considered as its third periodic report, by 21 November 2012.

42. Kenya

(1) The Committee considered the initial report of Kenya (CAT/C/KEN/1) at its 852nd and 854th meetings, held on 13 and 14 November 2008 (CAT/C/SR.852 and 854), and, at its 860th and 861st meetings, held on 19 November 2008 (CAT/C/SR.860-861), adopted the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the initial report of Kenya, which is in conformity with the Committee's guidelines for the preparation of initial reports, but regrets that the report was submitted nine years late.

(3) The Committee notes with satisfaction the frankness with which the State party acknowledged the gaps in its legislation relating to the elimination and prevention of torture. The Committee also appreciates the constructive and open dialogue that was conducted with the high-level delegation from the State party, as well as the replies to the questions raised during the dialogue.

B. Positive aspects

(4) The Committee welcomes the efforts made by the State party to strengthen its legal and institutional framework to safeguard universal human rights protection, including inter alia the following positive developments:

(a) The ratification by the State party of most of the core international human rights treaties;

(b) The ratification by the State party, on 15 March 2005, of the Rome Statute of the International Criminal Court;

(c) The enactment of the Community Service Order Act in 1998, which establishes the option of community services projects as an alternative to custodial sentences;

(d) The enactment of the Children Act in 2002;

(e) The enactment of the Witness Protection Act in 2006;

(f) The closing down of the infamous Nyayo House torture chambers;

(g) The establishment of the Kenya National Commission on Human Rights in 2003;

(h) The launch of the Governance, Justice, Law and Order Programme intended to reform the legal and justice sector;

(i) Recent establishment of the civilian independent Police Oversight Board;

(5) The Committee also welcomes the information provided by the delegation about the National Human Rights Policy and Plan of Action currently under development aimed at integrating human rights in the national planning process.

(6) The Committee notes with satisfaction that relevant reports were submitted to the Committee by the Kenyan National Commission on Human Rights and that representatives from the Commission attended the meetings of the Committee and provided valuable information.

(7) The Committee also welcomes the efforts made by the State party to cooperate with non-governmental organizations, particularly national and local organizations, which have provided the Committee with valuable contributions to the review process of the initial report. The Committee encourages the State party to strengthen its cooperation with such organizations with regard to the implementation of the provisions of the Convention.

C. Subjects of concern and recommendations

Definition of torture and appropriate penalties for acts of torture

(8) The Committee takes note that the State party is a dualist state requiring domestication or incorporation of international instruments at the national level through an act of Parliament and it regrets that the State party has not yet incorporated the Convention into its legal framework. While acknowledging that torture is prohibited by section 74 (1) of the Kenyan Constitution, the Committee deeply regrets that the Penal Code and Code of Criminal Procedure do not contain a definition of torture and therefore lack appropriate penalties applicable to such acts, including psychological torture (arts. 1 and 4).

> **The State party should ensure the incorporation of the Convention into its legal framework. Furthermore, the State party should, without delay, include a definition of torture in its penal legislation in full conformity with article 1 of the Convention and ensure that all acts of torture are punishable by appropriate penalties which take into account their grave nature as laid out in article 4, paragraph 2, of the Convention. The Committee urges the State party to seize the Kenya Law Reform Commission of this deficiency with a view to remedy it.**

Access to justice

(9) While the Committee takes into account the efforts made by the State party aimed at consolidating and ensuring the integrity, efficiency and transparency of its justice system, the Committee is concerned that the steps taken so far have not been comprehensive enough (art. 2).

> **The Committee invites the State party to adopt a more comprehensive approach to reform the justice system with a view to enhancing its integrity, efficiency and transparency.**

(10) While the Committee acknowledges the recent establishment of a national legal aid scheme and an awareness programme, it remains concerned about the persistent problem of access to justice, particularly by those without economic resources (art. 2).

> **The Committee urges the State party to take all necessary measures to ensure that the lack of resources is not an obstacle to accessing justice. The State party should urgently implement the recently established national legal aid scheme, which could be accompanied by the setting up of an Office of Public Defender.**

Age of criminal responsibility

(11) The Committee is deeply concerned that the age of criminal responsibility in the State party is still set at 8 years of age despite the recommendations made by the Human Rights Committee in 2005 (CCPR/CO/83/KEN) and by the Committee on the Rights of the Child in 2007 (CRC/C/KEN/2) (art. 2).

The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it in line with the generally accepted international standards.

Arbitrary arrest and police corruption

(12) The Committee is deeply concerned about the common practice of unlawful and arbitrary arrest by the police and the widespread corruption among police officers, which particularly affects the poor living in urban neighbourhoods. The Committee is also concerned about the bail system currently in place (arts. 2 and 11).

The Committee urges the State party to address the problem of arbitrary police actions, including unlawful and arbitrary arrest and widespread police corruption, particularly in slums and poor urban neighbourhoods, through clear messages of zero-tolerance to corruption from superiors, the imposition of appropriate penalties and adequate training. Arbitrary police actions must be promptly and impartially investigated and those found responsible punished. The State party should also reform the bail system currently in place with a view to ensuring that it is more reasonable and affordable.

Torture and ill-treatment and safeguards while in custody

(13) While taking note of the ongoing revision of the Administration Police Act, the Committee notes with deep concern the numerous and consistent allegations of widespread use of torture and ill-treatment of suspects in police custody. The Committee also notes with concern the challenges reported by the State party in providing people under arrest with the appropriate legal safeguards, including the right to access a lawyer, an independent medical examination and the right to contact family members. In this connection, the Committee regrets the lack of detailed statistical data disaggregated on the number of prosecutions and of criminal and disciplinary actions taken against law enforcement officials found guilty of torture and ill-treatment (arts. 2 and 11).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment of suspects in police custody and to announce a zero-tolerance policy of all acts of torture or ill-treatment by State officials or others working in their capacity. The State party should promptly adopt effective measures to ensure that all persons detained are afforded, in practice, with the fundamental legal safeguards during detention, including the right to a lawyer, to an independent medical examination and to notify a relative.

Furthermore, the State party should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.

The State party should provide detailed statistical data disaggregated by crime on prosecution as well as criminal and disciplinary actions against law enforcement officials found guilty of torture and ill-treatment.

(14) The Committee notes with concern the reported difficulties experienced by the Kenya National Commission on Human Rights to freely access and monitor places of detention, particularly police stations (arts. 2 and 11).

The State party should take all appropriate measures to ensure that the Kenya National Commission on Human Rights, without exception, is provided with the necessary conditions to carry out its mandate to independently monitor all places of detention, including police stations.

Conditions of detention

(15) The Committee is concerned about the dire conditions of detention in Kenyan prisons, particularly the overcrowding, lack of appropriate health services and high levels of violence inside the prisons, including inter-prisoner violence. The Committee notes the relevant work undertaken by the Kenya National Commission on Human Rights in

monitoring the conditions of prisons. The Committee is nevertheless concerned that visiting judges play a limited role in inspecting the conditions of detention (art. 11).

> **The Committee urges the State party to take effective measures to bring the conditions of detention into line with United Nations Standard Minimum Rules for the Treatment of Prisoners. In addition, the State party should allocate the material, human and budgetary resources necessary to:**
>
> **(a) Reduce overcrowding in prisons, in particular the high number of persons in pretrial detention, by inter alia enforcing the relevant provisions which provide for alternative non-custodial measures for minor offences and by reforming the abusive bail system currently in place;**
>
> **(b) Ensure that adequate health services are available in all prisons by increasing the number of medical practitioners working for the penitentiary system;**
>
> **(c) Take the appropriate measures to reduce the high level of violence inside prisons, including inter-prisoners violence, and punish those responsible;**
>
> **(d) Strengthen judicial supervision of conditions of detention foreseen in the Prison Act.**

Non-refoulement and renditions

(16) While the Committee acknowledges the long history of the State party as a host country for refugees from the region as well as it efforts in resettling and integrating these populations, it remains deeply concerned that the current refoulement procedures and practices may expose individuals to the risk of torture. More specifically, the Committee notes with concern that the Immigration Act does not make reference to the absolute principle of non-refoulement in relation to torture and it does not provide for a process of independent review of removal orders. The Committee is further concerned about the fact that section 21 (1) of the Refugee Law (2006) provides for an exception to the general principle of non-refoulement allowing expulsion of refugees on the basis of national security (art. 3).

> **The State party should adopt the necessary measures to bring current expulsion and refoulement procedures and practices fully in line with article 3 of the Convention. In particular, expulsion and refoulement of individuals should be decided after careful assessment of the risk of being tortured in each case and should be subject to appeal with suspensive effect. The Committee urges the State Party to fulfil all its obligations under article 3 of the Convention thereby guaranteeing the absolute principle of non-refoulement.**

(17) The Committee notes with concern the statements made by the State party delegation, also confirmed by numerous and consistent reports and allegations, about the practice of returns and renditions of individuals, nationals and non-nationals, to Somalia, Ethiopia and Guantánamo Bay, including the case of Mr. Abdulmalik, on the basis of national security and actions to fight terrorism (arts. 2 and 3).

> **The Committee urges the State party to ensure that any measure taken to combat terrorism is in accordance with Security Council resolutions 1373 (2001) and 1566 (2004), which require that anti-terrorist measures be carried out with full respect for, inter alia, international human rights law, including the Convention. The Committee calls upon the State party to investigate these allegations in order to establish responsibilities and ensure compensation to victims.**

Human rights training of law enforcement personnel

(18) While acknowledging the existing training programmes on human rights for law enforcement personnel, the Committee remains concerned that such trainings do not include the prohibition of torture as specific crime of grave nature and do not reach all relevant personnel who are in direct contact with detainees, including police officers, prison staff, judges and, including the military and health personnel (art. 10).

The State party should reinforce and expand the human rights training programmes with the objective of bringing about a change in attitudes and behaviour. Training should include the prohibition of torture as specific crime of grave nature and should be made available to all law enforcement personnel enumerated in article 10 of the Convention, at all levels, including to the military and health personnel who are in direct contact with persons deprived of their liberty.

Use of force by police during post-election violence

(19) The Committee notes with serious concern the numerous reports and allegations of disproportionate use of force and widespread torture and other cruel, inhuman and degrading treatment or punishment by members of the police forces during the 2007-2008 post-election violence, including sexual violence and gang rape. In this respect, the Committee welcomes the establishment of the Commission of Enquiry into Post-Election Violence, takes note of its recently published report, also known as the "Waki report", and acknowledges its important findings (arts. 11 and 12).

While taking note of the recently established special task force by the police to enquire on sexual-related crimes during the post-election violence, the Committee urges the State party to take immediate action to ensure prompt, impartial and effective investigation of all allegations of excessive use of force and torture by the police during this period, including sexual violence and gang rape, with the aim of prosecuting and punishing perpetrators with penalties appropriate to the grave nature of their acts. The State party should ensure that the victims of post-election violence obtain redress and adequate compensation.

Extrajudicial killings and enforced disappearances

(20) The Committee is disturbed to learn about consistent allegations of ongoing extrajudicial killings and enforced disappearances by law enforcement personnel, particularly during special security operations, such as the "Chunga Mpaka" Operation in the Mandera district in September 2008, and operations against criminal bands, such as the "Mathare Operation" in June 2007. The Committee is further concerned about the lack of investigation and legal sanctions in connection with such allegations , as well as about information regarding impediments that non-governmental organizations face in their attempts to document cases of disappearance and death (arts. 2, 11 and 12).

The Committee urges the State party to conduct immediate, prompt and impartial investigations into these serious allegations, and to ensure that perpetrators are prosecuted and punished with penalties appropriate to the grave nature of their acts as required by the Convention. The State party should take all possible steps to prevent acts such as the alleged extrajudicial killings and enforced disappearances.

Violence by State agents and access to land

(21) While taking note of the inclusion of the issue of land reform in item 4 of the Kenya National Dialogue and Reconciliation Agenda, the Committee is concerned about the persistent linkage between widespread violence and torture by State agents and the problem of land in the State party. The lack of access to land, paired with other social and economic injustices, are frequently considered as root causes of torture and violence. In this connection, the Committee is deeply concerned about allegations of mass arrests, persecution, torture and unlawful killings by the military in the Mount Elgon region during the "Operation Okoa Maisha" conducted in March 2008 (arts. 12 and 16).

The Committee urges the State party to take immediate action to ensure prompt, impartial and effective investigations into the allegations of use of excessive force and torture by the military during the "Operation Okoa Maisha" in March 2008. The Sate party should further ensure that perpetrators are prosecuted and punished according to the grave nature of their acts, that the victims who lost their lives are properly identified and that their families, as well as the other victims, are adequately compensated.

(22) The Committee is further concerned about reports of the use of excessive force, sometimes resulting in violent deaths, by the police during evictions, particularly in urban areas, which often result in the destruction of homes and other personal belongings (arts. 12, 13 and 16).

> **The State party should adopt effective measures to prevent the use of excessive force during evictions. Furthermore, the State party should provide specific training on such actions as evictions for police officers, and ensure that complaints concerning forced evictions are thoroughly investigated and that those found responsible are brought to trial.**

Impunity

(23) The Committee is concerned about the absence of a specific legal framework to ensure prompt and impartial investigations into acts of torture and other cruel, inhuman and degrading treatment or punishment committed by law enforcement personnel. The Committee is further concerned that acts of torture and ill-treatment are seldom investigated and prosecuted and that perpetrators are either rarely convicted or are sentenced to lenient penalties not in accordance with the grave nature of their crimes. In this connection, the Committee expresses its concern over the culture of impunity for perpetrators of acts of torture and ill-treatment throughout the country (arts. 2, 4 and 12).

> **The State party should take vigorous steps, including the setting up of a specific legal framework, to eliminate impunity for perpetrators of acts of torture and ill-treatment by ensuring that all allegations are investigated promptly, effectively and impartially, that perpetrators are prosecuted and convicted in accordance with the gravity of the acts, and that victims are adequately compensated, as required by the Convention.**
>
> **In this connection, the Committee welcomes the assurances provided by the delegation that information will be submitted regarding the status of individual cases of torture pending in court as well as torture-related deaths without inquest listed in the annexes of one of the alternative reports submitted by a coalition of national non-governmental organizations.**

Lack of accessible complaints mechanism

(24) While acknowledging the recent establishment of a Public Complaints Standing Committee, the Committee is very concerned about the impediments faced by individuals who may have been subject to torture and ill-treatment to complain and have their cases promptly and impartially examined by the competent authorities. In this connection, while taking note that the complaint forms (including the "P3 form") are now available free of charge on the website of the Kenyan police department as well as in public hospitals, the Committee is concerned that the practice of medical practitioners of charging fees for completing P3 forms may reduce the possibility of persons with limited economic resources to file and corroborate complaints (arts. 12 and 13).

> **The Committee urges the State party to take the necessary measures to ensure that all individuals who may have been subject to torture and ill-treatment have the possibility to complain and their case promptly and impartially examined by the competent authorities. The State party should ensure that all necessary steps to file a complaint are facilitated, including access to medical assessment as required by the "P3 form".**

Redress and compensation

(25) The Committee is concerned at the problems and delays, acknowledged by the State party, in providing compensation to victims of torture, including the victims of special police and military operations. The Committee is also concerned at the lack of data and statistical information on the number of cases of compensation to victims of torture or to members of their families (art. 14).

The State party should take all appropriate measures to ensure that a victim of an act of torture obtains redress and has the right to an fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should provide the Committee with statistical data on cases of compensation provided to victims or to members of their families.

Violence against women and children

(26) While noting the enactment of the Sexual offences Act in 2006, the Committee notes with concern the persistence of widespread violence against women and children in Kenyan society, including sexual exploitation and trafficking, as well as the high levels of impunity for such crimes. The Committee is particularly concerned about the difficulties that women face when accessing the justice system to denounce cases of sexual violence due inter alia to the existing provisions in section 38 of the Sexual Offences Act. The Committee is further concerned about the delays in enacting the relevant legislation intended to protect women, including Domestic Violence (Family Protection) Bill, the Anti-trafficking in Persons Bill, the Equal opportunities Bill and the Matrimonial Property Bill.

The Committee notes with satisfaction the development of reference manual as the basis for training of law enforcement personnel at different levels, which addresses violence against women, but it remains concerned that not enough attention has been paid to the training of personnel who are in direct contact with victims (arts. 12 and 16).

The State party should, as a matter of urgency, take all necessary legal and administrative measures to protect women and children from all forms of violence. In particular, the Committee encourages the State party to facilitate the access to justice for women, including, inter alia, through the revision of section 38 of the Sexual Offences Act. The State party should also ensure the speedy enactment of the relevant legislation, including the Domestic Violence (Family Protection) Bill, the Anti-Trafficking in Persons Bill, the Equal Opportunities Bill and the Matrimonial Property Bill.

The State party should provide the necessary specific training to all law enforcement personnel, particularly to the personnel who are in direct contact with women victims of violence.

Female genital mutilation

(27) While acknowledging the fact that female genital mutilation is outlawed in the State party, the Committee notes with concern that the practice still persists among certain ethnic groups (art. 16).

The State party should take all necessary steps to eradicate the practice of female genital mutilation, including through the intensification of nationwide awareness raising campaigns, and to punish the perpetrators of such acts.

Human rights defenders

(28) The Committee notes with concern allegations of reprisals, serious acts of intimidation and threats against human rights defenders, especially those who report acts of torture and ill-treatment, and in particular human right defenders involved in addressing the post-election violence (art. 16).

The State party should take effective steps to ensure that all persons reporting on acts of torture and ill-treatment are protected from intimidation and from any form of reprisal as a result of their activities. The Committee encourages the State party to seek closer cooperation with civil society in preventing torture, in particular in the ongoing process of investigating and holding persons accountable for the post-election violence.

Death penalty

(29) While acknowledging that the death penalty has not been applied in the State party since 1987 as well as taking note of the practice of the President of the Republic to commute death sentences, as well as the existence of a de facto moratorium of the death penalty, the Committee remains concerned, however, about the situation of uncertainty of those who serve on death row, which could amount to ill-treatment (art. 16).

> **The Committee urges the State party to take the necessary steps to establish an official and publicly known moratorium of the death penalty with a view of eventually abolishing the practice. The State party should take the necessary measures to improve the conditions of detention for persons serving on death row in order to guarantee basic needs and rights.**

Data collection

(30) The Committee regrets the lack of data and statistical information, especially on cases of torture, the type and number of complaints, prosecution and conviction of perpetrators as well as on compensation and rehabilitation of victims.

> **The Committee welcomes the additional information provided by the delegation after the consideration but it nevertheless requests the State party to provide in its next periodic report further information, including disaggregated data on the number of people held in custody, including remandees and prisoners, and length of sentences.**
>
> **The State party should also provide detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as on the related investigations, prosecutions and criminal and disciplinary sanctions.**

(31) The Committee encourages the State party to consider making the declaration under article 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider individual communications.

(32) The Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

(33) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

(34) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(35) The State party is encouraged to disseminate widely the reports submitted by the State party to the Committee and the latter's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(36) The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations, as contained in paragraphs 8, 11, 12, 19, 21 and 25 above.

(37) The State party is invited to submit its next report, which will be considered as its second periodic report, by 21 November 2012.

43. Lithuania

(1) The Committee considered the second periodic report of Lithuania (CAT/C/LTU/2) at its 838th and 841st meetings (CAT/C/SR.838 and 841), held on 4 and 5 November 2008, and adopted, at its 857th meeting (CAT/C/SR.857), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report of Lithuania and the information presented therein, and expresses its appreciation for the replies by the State party to the follow-up procedure of the Committee. The Committee also expresses its appreciation for the State party's thorough written responses to the list of issues (CAT/C/LTU/Q/2/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken by the State party to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the Committee notes with satisfaction the constructive efforts made by the multisectoral State party delegation to provide additional information and explanation during the dialogue.

B. Positive aspects

(3) The Committee welcomes that in the period since the consideration of the last periodic report, the State party, on 5 August 2004, ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and acceded to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

(4) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The Law on Equal Treatment which came into force on 1 January 2005 with the purpose to ensure the implementation of human rights laid down in the Constitution and to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion, or beliefs;

(b) The 2007 Law on the Amendment of the Law on Equal Treatment which incorporates the provisions of Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

(c) The Code of Conduct of Officers of the Prison Department and Its Subordinate Institutions and the 2004 Code of Ethics for Lithuanian Police Officials, adopted by Order No. 347 of the Commissioner General of the Lithuanian Police;

(d) The 2007 Concept of the Probation System in Lithuania and the plan of implementing measures for this concept; and

(e) The Mental Health Strategy approved by the Seimas on 3 April 2007 and the adoption by the Government on 18 June 2008 of the State Mental Health Strategy Implementation Programme for 2008-2010.

C. Principal subjects of concern and recommendations

Definition of torture

(5) The Committee notes the State party's statement that under the Lithuanian Criminal Code all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable, as well as the explanation provided by the delegation in this respect. However, the Committee is concerned that the State party has not incorporated

into domestic law the crime of torture as defined in article 1 of the Convention. The Committee also regrets the lack of information provided as to whether the offence of torture, which is punishable under other provisions of the Criminal Code, may in some cases be subject to a statute of limitations. The Committee is of the view that acts of torture cannot be subject to any statute of limitations (arts. 1 and 4).

> **The State party should incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself. The Committee recommends that the State party review its rules and provisions on the statute of limitations to ensure that they are fully in line with its obligations under the Convention, so that acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, as established by article 1 of the Convention, can be investigated, prosecuted and punished without time limitations.**

National human rights institution

(6) The Committee notes the existence of the Lithuanian Ombudsman's Offices, including the Seimas Ombudsman. However, it regrets the lack of information provided on the number of complaints of alleged ill-treatment or torture received by the Seimas Ombudsman's Office, the number of investigations carried out by this office, the number of these cases that went to trial, and the outcomes of such trials, including information on the kinds of punishments meted out and compensation offered to victims, if any. The Committee also regrets the lack of information on the human and financial resources allocated to the office (art. 2).

> **The State party should take appropriate measures to ensure the effective functioning of the Ombudsman institution, including the requisite human and financial resources. The State party should provide more information in its next periodic report as to whether any cases concerning ill-treatment perpetrated by police officers and other officials were opened or investigated. The State party is encouraged to seek accreditation with the International Coordinating Committee of National Human Rights Institutions to ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex), including with regard to its independence.**

Fundamental safeguards

(7) The Committee notes the adoption by the Minister of Health of the 2004 Order No. V-8 regulating the objectives and functions of medical stations at detention facilities. However, the Committee notes with concern that the Order may not provide detainees the right to request and receive a medical examination by a doctor at their own request. It also regrets the lack of information on the number of doctors currently working in detention facilities, and the system in place to ensure that detainees may have access to them (arts. 2 and 16).

> **The State party should take effective measures to ensure that all detainees are afforded fundamental legal safeguards in practice, including the right to have access to a doctor. The Committee recommends that the State party provide more information on the number of doctors currently working in detention facilities, and the system in place to ensure that detainees may have access to them.**

Asylum-seekers

(8) The Committee welcomes the information provided by the delegation that the Law on the Legal Status of Aliens (Aliens Law) has been amended in November 2006 and that asylum-seekers are now exempt from detention, even in cases where they enter or stay illegally in the State party. While noting that the State party provides mandatory medical

screening to newly arrived asylum-seekers upon arrival to the accommodation facilities at the Foreigners' Registration Centre (FRC) in Padrade, the Committee is concerned that there is no mechanism in place to identify persons with special needs and possible victims of torture or ill-treatment. The Committee is also concerned that all asylum-seekers, including single women or women with children, and traumatized asylum-seekers, are accommodated in the same building (arts. 2 and 16).

> **The Committee recommends that the State party take necessary steps to ensure appropriate reception conditions for asylum-seekers with special needs, such as single women or women with children and traumatized asylum-seekers, by providing them with separate accommodation. The Committee further recommends that medical personnel, social staff in reception centres and others involved in the refugee status determination procedure should receive thorough training and sensitization in respect of victims of torture or ill-treatment in order to identify such cases at an early stage for referral to the appropriate medical and psychosocial services.**

Non-refoulement

(9) While noting that article 130 of the Aliens Law provides for prohibition of refoulement, whenever there are serious grounds to believe that the person concerned will be tortured or subjected to cruel, inhuman or degrading treatment, the Committee notes with concern that the principle of non-refoulement does not apply with respect to an alien who, for serious reasons, constitutes a threat to the security of the Republic of Lithuania or has been convicted by an effective court judgement of a serious or grave crime and constitutes a threat to the public (art. 3).

> **The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.**
>
> **In this respect, the State party should ensure that the relevant judicial and administrative authorities carry out a thorough and exhaustive examination, prior to making any expulsion order, in all cases of foreign nationals who have entered or stayed in Lithuania unlawfully, including individuals who may constitute a security threat, in order to ensure that the persons concerned would not be subjected to torture, inhuman or degrading treatment or punishment in the country where they would be returned.**

Training

(10) The Committee notes with appreciation the approval of the 2006 Lithuanian Police System Development Programme with the objective, inter alia, to create an integrated management system for the selection, training, qualification improvement and retraining of police personnel, as well as the 2007 Plan of Measures for Implementing the Development Programme. The Committee also notes the detailed information provided by the State party on training programmes and sessions for law enforcement officials, prison staff, border guards, migration officials, officers of correctional inspection departments, health care specialists and psychologists, etc. However, the Committee regrets the limited information on monitoring and evaluation of these training programmes and the lack of available information on the impact of the training conducted for all relevant officials, including law enforcement officials, prison staff and border guards, and on how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

> **The State party should further develop educational programmes to ensure that all officials, including law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant personnel should receive specific training on how to identify signs of torture and ill-treatment. The Committee recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians and that the Manual is translated into the Lithuanian**

language. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.

Pretrial detention

(11) The Committee notes the changes that have occurred in the legal regulation of the operation of police detention facilities, including the approval in May 2007 of the Rules of Procedure of the Detention Facilities of Territorial Police Establishments and the Manual for Security and Maintenance of Detention Facilities of Territorial Police Establishments. The Committee also takes note of the Law on the Execution of Detention which will enter into force on 1 April 2009, which stipulates the conditions for keeping detainees in pretrial wards and sets forth a clear and direct prohibition to subject a person to torture or cruel or degrading treatment upon the execution of detention. However, the Committee remains concerned at reports of prolonged pretrial detention and administrative detention of both minors and adults and the high risk of ill-treatment which it entails, and regrets the lack of use of alternatives to imprisonment (arts. 2, 11 and 16).

The State party should take appropriate measures to further reduce the duration of detention in custody and detention before charges are brought, and develop and implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences.

Conditions of detention

(12) The Committee is concerned that notwithstanding the measures taken by the State party to improve conditions of detention, including in the context of the 2004 Programme of Renovation of Detention Facilities and Improvement of Conditions for Persons Held in Detention, there is continuing overcrowding in places of detention, in particular in Pretrial Wards and the Hospital of Imprisonment Institutions. While noting that conditions of detention have improved considerably in recent years, the Committee is concerned at the overall conditions in some prisons and Pretrial Wards, including unsuitable infrastructures and unhygienic living conditions. Furthermore, while noting the implementation of violence prevention programmes in places of imprisonment, the Committee is concerned at the occurrence of inter-prisoner violence and lack of statistical data that may provide breakdown by relevant indicators to facilitate the determination of root causes and the design of strategies to prevent and reduce such occurrences (arts. 11 and 16).

The Committee recommends that the State party:

(a) Continue its efforts to alleviate the overcrowding of penitentiary institutions, including Pretrial Wards and the Hospital of Imprisonment Institutions, including through the application of alternative measures to imprisonment and the increase of budgetary allocations to develop and renovate the infrastructure of prisons and other detention facilities;

(b) Take effective measures to further improve living conditions in the detention facilities, including prisons and Pretrial Wards;

(c) Take effective steps to systematically and effectively monitor all places of detention; and

(d) Monitor and document incidents of inter-prisoner violence with a view to revealing root causes and designing appropriate prevention strategies, and provide the Committee with data thereon, disaggregated by relevant indicators.

Excessive use of force and ill-treatment

(13) The Committee expresses its concern at the number of allegations of excessive use of force and ill-treatment by law enforcement officials, and the low number of convictions in such cases. In addition, the Committee regrets the lack of

statistical data on complaints, prosecutions and sentences in respect of excessive use of force and ill-treatment by law enforcement officials (arts. 4, 12 and 16).

> **The State party should take effective measures to send a clear and unambiguous message to all levels of the police force hierarchy that torture, ill-treatment and excessive use of force are unacceptable, including through the enforcement of the 2004 Code of Ethics for Lithuanian Police Officials, and ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duties. Referring to article 4, paragraph 2, of the Convention, the Committee underlines that the State party should apply sanctions that are proportional with the offences, and the State party is encouraged to initiate the collection of statistics on disciplinary penalties imposed.**

Prompt, thorough and impartial investigations

(14) The Committee regrets the lack of information on the system in place to review individual complaints about police misconduct and it is concerned at the number of complaints of use of force and ill-treatment by law enforcement officials, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated (arts. 12 and 16).

> **The Committee recommends that the State party should:**
>
> **(a) Strengthen its measures to ensure prompt, thorough, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation; and**
>
> **(b) Try the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention.**

Ill-treatment of conscripts

(15) While noting the information provided by the delegation, the Committee remains concerned at allegations of ill-treatment of conscripts in the army (art. 16).

> **The State party should ensure prompt, impartial and thorough investigations into all allegations of ill-treatment of conscripts in the army and prosecute and punish perpetrators with appropriate penalties. In this respect, the State party should ensure that all examinations of complaints against military personnel are carried out by an independent and impartial body. The State party is encouraged to provide detailed information on the effective measures adopted to prevent and combat such acts.**

Compensation and rehabilitation

(16) While noting the adoption of the Law on the Compensation for the Damage caused by Violent Crimes and the establishment of the Crime Victims Fund, the Committee regrets the insufficient information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases, as well as the lack of information on treatment and social rehabilitation services and other forms of assistance, including medical and psycho-social rehabilitation, provided to these victims. The Committee further regrets the lack of a specific programme to safeguard the rights of victims of torture and ill-treatment (art. 14).

> **The State party should strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims with redress and fair and adequate compensation, including the means for as full**

> **rehabilitation as possible. The State party should develop a specific programme of assistance in respect of victims of torture and ill-treatment. Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes. The State party is encouraged to adopt the proposed amendment to the Law on the Compensation for the Damage caused by Violent Crimes which was submitted to the Seimas on 31 October 2007.**

(17) The Committee is concerned at the insufficient prosecution and sentencing of those criminally responsible for crimes against humanity, including possible acts of torture, committed during the Nazi and Soviet occupations. The Committee is also concerned at the lack of information on rehabilitation and other measures provided to the victims (arts. 12 and 14).

> **The Committee considers that failure to prosecute and to provide adequate rehabilitation all contribute to a failure of the State party to meet its obligations under the Convention to prevent torture and ill-treatment, including through educational and rehabilitation measures. The State party should ensure prompt, impartial and thorough investigations into all such motivated acts and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts, and provide rehabilitation measures to the victims, including steps to prevent impunity.**

Prohibition of any statement obtained under torture from being invoked as evidence

(18) The Committee expresses its concern at the fact that the State party does not have uniform legislation ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, as required by article 15 of the Convention.

> **The State party should ensure that legislation concerning evidence to be adduced in judicial proceedings is brought in line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.**

Rights of vulnerable groups and discrimination

(19) While noting a number of measures adopted by the State party, including the Strategy for the Development of the Ethnic Minorities Policy until 2015, the Programme for the Integration of the Romany into the Lithuanian Society for 2008-2010 and the National Antidiscrimination Programme for 2006-2008, the Committee is concerned at reports of ill-treatment and discrimination of ethnic minorities, especially Roma. In this respect, the Committee is concerned at information indicating that instances of ill-treatment by law enforcement officials, in particular the police, are often directed at persons belonging to ethnic minorities. The Committee is also concerned at the lack of information on the number of hate crimes in the country and on the existence of a recording and monitoring system in respect of hate crimes (art. 16).

> **The State party should intensify its efforts to combat discrimination and ill-treatment of ethnic minorities, in particular Roma, including through the strict application of relevant legislation and regulations providing for sanctions. The State party should ensure prompt, impartial and thorough investigations into all such motivated acts and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts, and ensure adequate training and instructions for law enforcement bodies and sensitization of the judiciary. The State party is encouraged to provide detailed information in its next periodic report on the number of hate crimes and the effective measures adopted to prevent and combat such acts. The Committee takes note of the information provided by the State party that a new national antidiscrimination programme for 2009-2011 is being prepared and calls upon the State party to ensure the necessary budgetary allocations for its effective implementation.**

Domestic violence

(20) The Committee takes note of various measures taken by the State party, including the approval by the Government on 22 December 2006 of the long-term State Strategy on the Reduction of Violence against Women and the Plan of Implementing Measures 2007-2009. However, the Committee expresses concern about the high prevalence of violence against women and children, including domestic violence, and it regrets the absence of a definition of domestic violence in national legislation and that such violence is not recognized as a specific crime. The Committee also regrets that the number of crisis centres, which have mostly been established and are operated on the initiative of NGOs, is insufficient due to lack of financial governmental support. While noting that territorial police establishments have started collecting, compiling and analysing data related to domestic violence, the Committee regrets the lack of State-wide statistics on domestic violence and that statistical data on complaints, prosecutions and sentences in matters of domestic violence were not provided (arts. 1, 2, 12 and 16).

> **The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence. The Committee calls upon the State party to allocate sufficient financial resources to ensure the effective implementation of the State Strategy on the Reduction of Violence against Women and to closely monitor the results achieved. The State party should adopt a specific type of criminal offence for domestic violence. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and it should ensure that all women who are victims of domestic violence have access to a sufficient number of safe and adequately funded shelters. The State party is also encouraged to conduct broader awareness campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with the victims. Furthermore, the Committee recommends that the State party strengthen its efforts in respect of research and data collection on the extent of domestic violence, including its prevalence, causes and consequences.**

Trafficking

(21) The Committee recognizes the existence of legislative and other measures to address trafficking in women and children, including for sexual exploitation purposes, such as the Programme for the Prevention and Control of Trafficking in Human Beings for 2005-2008, the establishment, in 2006, of a specialized Department of Investigation of Trafficking in Human Beings at the Police Department under the Ministry of Internal Affairs and the ratification, in 2003, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. However, the Committee is concerned about persistent reports of cross-border trafficking in women for sexual and other exploitative purposes and it regrets the low number of prosecutions in this respect. The Committee also regrets that the State party does not have an effective system in place to monitor and assess the extent and impact of this phenomenon or to address it effectively (arts. 2, 10 and 16).

> **The State party should continue to take effective measures to prosecute and punish trafficking in persons, including through the strict application of relevant legislation. The State party should continue to conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.**

Data collection

(22) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on trafficking and domestic and sexual violence. The Committee also regrets the lack of statistics in respect of asylum-seekers and non-citizens as well as inter-prisoner violence (arts. 12 and 13).

> **The State party should establish an effective system to gather all statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions**

and convictions of cases of torture and ill-treatment, inter-prisoner violence, trafficking and domestic and sexual violence. The Committee recognizes the sensitive implications of gathering personal data and emphasizes that appropriate measures should be taken to ensure that such data collection is not abused.

(23) While taking note of the statement by the delegation that serious and ongoing discussions are taking place regarding the possible future ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee encourages the State party to ratify the Optional Protocol.

(24) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. The Committee also invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(25) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(26) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(27) The State party is encouraged to disseminate widely the reports submitted by Lithuania to the Committee and the concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 12, 14 and 15 above.

(29) The State party is invited to submit its next periodic report, which will be considered as its third periodic report, by 21 November 2012.

44. Montenegro

(1) The Committee considered the initial report of Montenegro (CAT/C/MNE/1 and Corr.1) at its 848th and 851st meetings (CAT/C/SR.848 and CAT/C/SR.851), held on 11th and 12th November 2008, and adopted, at its 861st meeting (CAT/C/SR.861), held on 19 November 2008, the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the State party's initial report and the replies to its list of issues (CAT/C/MNE/Q/1). The Committee expresses appreciation for the constructive dialogue held with the high-level delegation.

B. Positive aspects

(3) The Committee welcomes the many legislative and administrative measures taken by the State party in areas of relevance to the Convention, including the adoption of:

(a) The new Constitution in 2007 which defines torture and stipulates that international treaties have supremacy over national legislation;

(b) The Law on Protection of Rights of Mental Health Patients, the establishment of the Committee on Ethics and the Council for the Protection of Rights of Mental Health Patients in 2006;

(c) The Asylum Law in July 2006 with application as of 25 January 2007;

(d) The Strategy for the Reform of the Judiciary for the period 2007 – 2012; and

(e) The Code of Police Ethics in January 2006.

(4) The Committee also welcomes the ratification of the Rome Statute of the International Criminal Court in 2006.

C. Main subjects of concern and recommendations

Definition of torture

(5) While noting that article 9 of the Constitution provides that international treaties may be directly applicable by the courts and that the provisions of international treaties have precedence over domestic law, the Committee remains concerned that the definition of torture provided in domestic legislation is not fully in conformity with the definition of article 1 in the Convention. In particular, the Committee is concerned that the Criminal Code does not explicitly criminalize consent or acquiescence of torture by a public official and does not specifically cover mental suffering inflicted as torture (art. 1).

> **The State party should bring its definition of torture in domestic legislation in accordance with article 1 of the Convention.**

Fundamental legal safeguards

(6) The Committee is concerned that, in practice, detainees are not always afforded the right to access a lawyer, an independent doctor, if possible of their choice, and to contact a relative from the outset of deprivation of liberty. The Committee is also concerned that pretrial detainees do not have in all circumstances the right to confidential communication with their legal counsels (art. 2).

> **The State party should take effective measures to ensure that all detainees are afforded, in practice, fundamental legal safeguards during their detention. These include, in particular, the right to access a lawyer, an independent doctor, if possible of their own choice, and to contact a relative as from the outset of deprivation of liberty. Furthermore, the State party should ensure the right of detainees to have confidential communication with their legal counsels in all circumstances.**

The Protector of Human Rights and Freedoms (Ombudsman)

(7) While welcoming the establishment in 2003 of the Ombudsman, with a mandate, inter alia, to monitor the conditions of detention, including treatment of detainees, in prisons and other premises in which individuals are deprived of their liberty, the Committee remains concerned that the Ombudsman has not been able to conduct regular visits to places of detention. The Committee is also concerned that the independence of this institution is not fully ensured and that adequate human and financial resources have not been allocated in order to effectively fulfil its mandate (art. 2).

> **The State party should take appropriate legal measures to ensure the full independence of the Ombudsman and provide adequate human and financial resources to enable his office to carry out its mandate to independently and impartially monitor and investigate alleged ill-treatment perpetrated by law enforcement personnel. The State party should pursue speedily the recommendations issued by the Ombudsman.**

Independence of the judiciary

(8) The Committee is concerned that the new constitutional provisions for the appointment and dismissal of judges by the Judicial Council do not yet fully protect the independence of the judiciary (arts. 2 and 12).

The State party should guarantee the full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146 of December 1985) and that judicial appointments are made according to objective criteria concerning qualification, integrity, ability and efficiency. Furthermore, the State party should adopt an independent monitoring mechanism of Court proceedings with the view to further enhancing the independence of the judiciary.

Juvenile justice system

(9) The Committee notes that the State party is considering the adoption of a separate Law on Juvenile Justice in line with international standards. However, the Committee is concerned at reports that juveniles in conflict with the law are often treated under the same laws and procedures applicable to adults, that they are held for long periods in pretrial detention and share open spaces with adult detainees (art. 16).

The State party should take measures to protect juveniles in conflict with the law in line with international standards, including the United Nations Standards Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, adopted by General Assembly resolution 40/33 of 29 November 1985) and to speedily adopt a comprehensive Law on Juvenile Justice in accordance with the above-mentioned standards.

Refugees and asylum-seekers

(10) The Committee notes with satisfaction that the Constitution of Montenegro guarantees the right to seek asylum and that in July 2006 the State party adopted its first Asylum Law, the implementation of which started on 25 January 2007. However, the Committee remains concerned that the Law is not yet fully implemented, including the establishment of facilities for the accommodation of asylum-seekers (art. 3).

The State party should provide the necessary human and financial resources to the administrative bodies responsible for the implementation of the Law on Asylum and promulgate the necessary regulations and operating instructions for the full implementation of the Law on Asylum. The State party should ensure that the principle of non-refoulement is duly observed as enshrined in article 3 of the Convention.

Displaced persons

(11) The Committee is concerned that the State party has not yet regularized the legal status of a large number of "displaced persons" from Croatia and Bosnia-Herzegovina and "internally displaced persons" from Kosovo (art. 3).

The Committee reiterates the recommendations made by the Commissioner for Human Rights of the Council of Europe, following his visit to the country from 2 to 6 June 2008 (Commode (2008)25). In this regard, the State party should:

(a) Take concrete measures for the local integration of "displaced persons" from Croatia and Bosnia-Herzegovina and grant them a legal status and full protection against expulsion in violation of their legal rights;

(b) Regularize the status of "internally displaced persons" from Kosovo residing in Montenegro by granting them a proper legal status to minimize the risk of statelessness; and

(c) Consider ratifying the Convention on the Reduction of Statelessness adopted in 1961.

Impunity for war crimes

(12) The Committee is concerned at the reported climate of impunity surrounding war crimes which remain unaddressed or in the investigation phase, with little or no result to date. The Committee takes note of the information provided by the

State party on the developments with regard to the cases "Kaluderski Laz", "Morinj", Deportation of Muslims" and "Bukovica" (arts. 12 and 16).

The Committee urges the State party to expedite and complete its investigation of war crimes, and ensure that all perpetrators, in particular those bearing the greatest responsibility, are brought to justice. The Committee requests the State party to provide it with information in this respect.

Cooperation with the International Criminal Court

(13) While welcoming the State party's ratification of the Rome Statute of the International Criminal Court (ICC), the Committee regrets the bilateral agreement between the United States of America and Montenegro whereby United States nationals in the territory of Montenegro cannot be transferred to the International Criminal Court to be tried for war crimes or crimes against humanity (arts. 7 and 8).

The State party should take appropriate measures to review the terms of this agreement which prevent the transfer of United States nationals in the territory of Montenegro to the International Criminal Court, in accordance with the provisions of the Convention.

Training

(14) The Committee welcomes the detailed information provided by the State party on training programmes for law enforcement officials, prison staff, judges and prosecutors. However, the Committee regrets the lack of information on monitoring and evaluation of the effectiveness of these programmes in reducing incidents of torture and ill-treatment (arts. 10 and 16).

The State party should:

(a) Further develop educational programmes to ensure that all officials, including civil or military, law enforcement personnel, medical personnel and other officials who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, are fully aware of the provisions of the Convention;

(b) Ensure that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment and report such incidents to the competent authorities;

(c) Ensure that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999) becomes an integral part of the training provided to physicians and other officials undertaking investigations and that it is translated into all appropriate languages; and

(d) Develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture and ill-treatment.

Conditions of detention

(15) While welcoming the measures taken by the State party to improve considerably the conditions of detention, including the construction of new facilities and the renovation of existing ones, the Committee remains particularly concerned at the overcrowding and the poor material conditions in Podgorica Prison. The Committee is also concerned at the lack of information on sexual violence in prisons, including inter-prisoner violence (arts. 11 and 16).

The State party should strengthen the implementation of the national prison reform process, including the allocation of sufficient funds to further improve the infrastructure and, in particular, of Podgorica Prison. In

addition, the State party should ensure regular provision of hygienic articles and regular visits by family members. The Committee also recommends that the State party take appropriate measures to prevent sexual violence in prisons, including inter-prisoner violence.

Minorities

(16) While noting the various measures adopted by the State party, including the Strategy for Minority Policy; the Strategy for the Improvement of the Position of Roma, Ashkali and Egyptian populations (RAE) in Montenegro for the period 2008-2012; the Action Plan for the Implementation of the Project "Decade of Roma Inclusion 2005-2015" and the establishment in 2006 of the "Funds for Minorities", the Committee is concerned at information regarding the discriminatory treatment suffered by Roma, as well as their deplorable living conditions resulting from such treatment, which may amount to degrading treatment (art. 16).

The State party should ensure that Roma living in the State party are protected from discriminatory treatment. Furthermore, it should strengthen its efforts to implement the various plans and strategies addressing minorities, including Roma, so as to improve their extremely precarious living conditions and ensure their access to education, employment, including in the public administration, health care and social welfare, in a non-discriminatory manner.

Prompt, thorough and impartial investigations

(17) While welcoming the adoption of various measures to combat and prevent police brutality, including the adoption of the Code of Police Ethics, the Committee remains particularly concerned at the number of allegations of torture and ill-treatment by the police and the lack of prompt and impartial investigation of such cases (art. 12).

The State party should ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated. In particular, such investigations should not be undertaken by or under the authority of the police but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should, as a rule, be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might influence the investigation. The State party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for acts prohibited by the Convention.

The Committee notes the information provided by the State party's delegation on the specific cases put to it during the dialogue. However, the Committee wishes to reiterate the obligation of the State party to undertake an independent, thorough, and impartial investigation on all allegations of torture and ill-treatment. The Committee requests the State party to keep it informed of any developments, within the context of the ongoing dialogue, and, in particular, with regard to the report submitted by the Youth Initiative for Human Rights alleging torture by police officers.

Individual complaints

(18) The Committee is concerned at the lack of an effective complaint procedure for individuals who allege to be victims of torture or ill-treatment by law enforcement officials and in particular that they do not have access to their medical file to substantiate their claims. In practice, access to the medical file is granted only upon the decision of an investigating judge (arts. 13 and 16).

The Committee recommends that the State party ensure that every individual who alleges that he or she has been subjected to torture or ill-treatment has the right to complain to the competent authorities without any impediment. Furthermore, the State party should ensure that all persons deprived of their liberty should have access to their medical file upon their request, irrespective of the decision by the investigating judge.

(19) The Committee welcomes the adoption in 2004 of the law on Witness Protection which came into force on 1 April 2005, but regrets the lack of any information on its implementation, in particular on measures undertaken to protect complainants of torture or ill-treatment (arts. 13 and 16).

The Committee recommends that the State party ensure that protection is provided to complainants of torture and ill-treatment in order to ensure their effective right to file a complaint.

Compensation and rehabilitation

(20) The Committee notes the information provided by the delegation that compensation has been awarded in only one case for violations under the Convention and that no other victim of such violation has claimed compensation (art. 14).

The State party should ensure that victims of acts of torture have an enforceable right to claim from the State party fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should develop reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes. The State party should provide information, including statistical data, in this regard in its next periodic report.

Violence against women

(21) While noting that a Bill on Protection from Domestic Violence is under consideration, the Committee expresses its concern at the prevalence of violence against women and, in particular, domestic violence (art. 16).

The State party should:

(a) Complete consideration and adopt the draft law on domestic violence;

(b) Increase its efforts to prevent, combat and punish violence against women, including domestic violence, by providing, inter alia, free legal aid to the victims;

(c) Conduct broader awareness-raising campaigns and training on domestic violence for judges, lawyers, law enforcement officials and social workers who are in direct contact with the victims; and

(d) Take effective measures to ensure the immediate protection and long term rehabilitation of victims of violence.

Corporal punishment

(22) The Committee notes that corporal punishment of children is not explicitly prohibited in the home and in alternative care settings (art. 16).

Taking into account the recommendation in the United Nations Secretary-General's Study on Violence Against Children (A/61/299), the State party should adopt and implement legislation prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and educational campaigns.

Trafficking in persons

(23) While noting that the trend in trafficking in persons has decreased in the last years, the Committee is concerned at reports that trafficking in persons, particularly women, remain a considerable problem. The Committee is also concerned that Montenegro is a transit country (arts. 2, 10 and 16).

> **The State party should undertake effective measures, including through regional and international cooperation, to combat and prevent trafficking in persons, conduct training for law enforcement officials, particularly border and customs officials, continue to prosecute and punish perpetrators, and ensure the provision of free legal aid, recovery and reintegration services to victims of trafficking.**

(24) The Committee notes with appreciation the State party's statement that a Bill on the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is under the consideration of the Parliament. In this regard, the Committee recommends that the State party proceed with the ratification of the Optional Protocol to the Convention in order to strengthen the prevention against torture.

(25) The State party is encouraged to consider becoming a party to the core United Nations human rights treaties to which it is not yet a party, namely: the International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. It also recommends that the State party ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(26) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(27) The State party is encouraged to disseminate widely the report it submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in all appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 11, 12 and 17 above.

(29) The State party is invited to submit its next periodic report, which will be considered as the second report, by 21 November 2012.

45. Serbia

(1) The Committee against Torture considered the initial report of Serbia (CAT/C/SRB/2 and Corr.1) at its 840th and 843rd meetings (CAT/C/SR.840 and 843), held on 5 and 6 November 2008, and adopted, at its 857th and 859th meetings (CAT/C/SR.857 and 859), held on 17 and 18 November 2008, the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the initial report of Serbia which covers the period from 1992 to 2003 as well as the replies to the list of issues (CAT/C/SRB/Q/1/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken by the State party to implement the Convention. The Committee also notes with satisfaction the constructive dialogue held with a high-level delegation.

B. Positive aspects

(3) The Committee welcomes the many legislative changes, including the adoption of:

(a) A new Constitution which provides that no one may be subjected to torture that entered into force in 2006;

(b) The law that establishes the War Crimes Chamber, adopted in 2003;

(c) The Criminal Code which defines and criminalizes torture, adopted in 2005;

(d) The Law on the Protector of Citizens, which establishes the Protector of Citizens (Ombudsman), adopted in 2005;

(e) A Law on Criminal Procedure which was adopted in 2006 and entered into force in 2009; and

(f) The Law on Asylum, which establishes the principle of prohibition of non refoulement, which was adopted in 2007 and entered into force in 2008.

(4) The Committee welcomes the ratification, in 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also welcomes the ratification, in 2002 and 2003, respectively, of the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, as well as the ratification, in 2003, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

C. Main issues of concern and recommendations

Definition of torture

(5) While noting the criminalization of torture by several normative acts, the Committee is concerned that legislation is not yet fully harmonized with the Convention as, according to article 137 of the Serbian Criminal Code, the penalties established are not proportionate to the gravity of the crime. The Committee regrets the Supreme Court ruling of 2005 where it applied a statute of limitation in respect of the crime of torture. However, the Committee takes note of the State party's statement that a new law will remedy the incompatibility between Serbia's law and the Convention with regard to the statute of limitation by the end of 2009 (art. 1).

> **The State party should continue to make efforts to bring its definition of torture into line with article 1 of the Convention. In this respect, the State party should ensure that the penalties of the Criminal Code be brought in line with the proportional gravity of the crime of torture. The Committee urges the speedy completion of judicial reforms so that no statute of limitations will apply to torture.**

Fundamental safeguards

(6) The Committee notes that the Law on the Execution of Penal Sanctions provides for internal control by respective departments of the Ministry of Justice, that the Police Act passed in 2005 foresees the establishment of the Internal Control Sector and that internal control units have been established in all regional police centres. However, the Committee remains concerned at the lack of an independent and external oversight mechanism for alleged unlawful acts committed by the police. The Committee is also concerned that, in practice, the police do not respect the right of a detainee to access a lawyer of his or her own choice and to access an examination by an independent doctor within 24 hours of detention and the right to contact his or her family. The Committee is also concerned at the absence of adequate protocols for the medical profession on how to report on findings of torture and other cruel and inhuman or degrading treatment or punishment in a systematic and independent manner (art. 2).

> **The State party should ensure that an independent oversight mechanism for alleged unlawful acts committed by all agents of the State is set up. The State party should ensure that the right to access a lawyer of one's own choice and to contact a family member is respected in practice and that all detainees undergo a medical examination within 24 hours of detention, as previously recommended by the Committee in its inquiry procedure under article 20. The State party should also establish adequate protocols for its medical professionals to systematically report on findings of torture and other cruel and inhuman or degrading treatment or punishment.**

Protector of Citizens (Ombudsman)

(7) The Committee welcomes the establishment of the Ombudsman and the appointment of a deputy Ombudsman to improve the situation of persons deprived of liberty in institutions and prisons, including persons with mental, intellectual or physical disability and learning difficulties. However, the Committee remains concerned that the structures of the Ombudsman's office are not yet fully consolidated, that its independence is not fully ensured, that it has not been allocated adequate resources to fulfil its functions effectively and that, despite a large number of complaints (700), it does not have the capacity to analyse them. The Committee is also concerned that there is no specific mandate to monitor children's rights to be free from violence (art. 2).

The State party should:

(a) Intensify its efforts to ensure that the Ombudsman is able to independently and impartially monitor and investigate alleged police misconduct, including by strengthening the role and function of the deputy to the Ombudsperson on the protection of rights of persons deprived of liberty so as to include in his mandate the capacity to investigate acts committed by police officers;

(b) Ensure all relevant authorities follow up on the recommendations issued by the Ombudsman;

(c) Encourage the Ombudsman to seek accreditation with the International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights to ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134; and

(d) Consider taking the necessary measures to ensure that the Ombudsman promote and protect children from violence and in particular consider the adoption of a Law for the Ombudsman for the Rights of the Child.

Independence of the judiciary

(8) The Committee remains concerned about new constitutional provisions providing for the election of judges of all levels by the National Assembly. The Committee is also concerned with respect to the definition of rules of procedures of courts and at the absence of legislation in respect of disciplinary measures against judges (arts. 2 and 12).

The State party should guarantee the full independence and impartiality of the judiciary, by ensuring, inter alia, that judicial appointments be made according to objective criteria such as qualifications, integrity, ability and efficiency. The State party should also define the rules of procedures of courts and establish an independent disciplinary body in this regard.

Refugees

(9) The Committee notes the new Law on Asylum (2008), which establishes the principle of prohibition of non-refoulement, but remains concerned at the rules that interpret the application of the law with respect to the treatment of asylum-seekers (art. 3).

The State party should urgently adopt the necessary measures, especially of a legal nature, to put in practice the new Law on Asylum to protect the rights of asylum-seekers and persons seeking refugee status. The State party should also put in place measures to protect asylum-seekers and other foreigners in need of humanitarian protection.

Complaints, investigations and convictions

(10) While acknowledging the reform process of the judiciary, including the new law on judges and the new Penal Code that is due to come into effect in 2009, the Committee expresses concern over the slowness of investigations and that officials are not suspended during the investigations into allegations of torture or ill-treatment (arts. 4, 12, 13 and 16).

The State party should:

(a) Ensure that investigations into allegations of torture and other prohibited cruel, inhuman or degrading treatment or punishment are undertaken thoroughly, effectively and impartially, including complaints made under the previous public administration, as previously recommended by the Committee in its article 20 report;

(b) Suspend persons who have allegedly committed acts of torture during the investigation of such allegations, as previously recommended by the Committee in its article 20 report; and

(c) Comply with the Committee's Views under article 22 where it requests for further investigations in respect of individual communications and provide information to this effect in its next periodic report.

Cooperation with the International Criminal Tribunal for the Former Yugoslavia

(11) The Committee welcomes the steps taken to enhance cooperation and progress made with regard to the International Criminal Tribunal for the Former Yugoslavia (ICTY) as well as the establishment of witness protection programmes but it expresses concern over the uncertain future of the cases after the scheduled closure of the ICTY as well as for the safety of those who have or are in the process of providing evidence (art. 12).

The State party should ensure that:

(a) Full cooperation is extended to ICTY, including through apprehending and transferring those persons who have been indicted and remain at large, as well as granting the Tribunal full access to requested documents and potential witnesses;

(b) All persons, including senior police officials, military personnel, and political officials, suspected of complicity in and perpetrators of war crimes and crimes against humanity, are brought to justice in adequate penal proceedings, including after the scheduled closure of the ICTY tribunal; and

(c) Witnesses are effectively protected throughout all stages of the proceedings and afterwards.

Other war crimes investigations

(12) The Committee regrets the lack of explanation by the State party about the outcomes of the investigations into the "Ovcara case" (November 1991), and particularly the role of the Supreme Court in 2006 in quashing the first court's decision, and is concerned at the lack of information provided about the reasons for ordering a retrial (art. 12).

The State party should provide the Committee with information about the outcomes of the investigation into the "Ovcara case" (November 1991) and the reasons for ordering a retrial in 2006.

Human rights defenders

(13) The Committee expresses concern about the hostile environment for human rights defenders, particularly those working on transitional justice and minority rights and the lack of fair trials on cases filed against human rights defenders for alleged political reasons (art. 16).

> **The State party should take concrete steps to give legitimate recognition to human rights defenders and their work, and ensure that when cases are brought against them, such cases are conducted in conformity with international standards relating to fair trial.**

Training

(14) The Committee notes the State party's efforts with respect to training of prison staff by the Training Centre for the employees of the Directorate as of September 2004. However, it is concerned that the training is not targeted at education and information regarding the prohibition of torture and that training programmes for medical personnel for the identification and documentation of cases of torture in accordance with the Istanbul Protocol, is insufficient, as is the rehabilitation of victims. In addition, training to develop a more gender sensitive approach both in police legal and medical institutions are inadequate (art. 10).

The State party should:

(a) Ensure that education and training of all law enforcement personnel is conducted on a regular basis;

(b) Include in the training modules on rules, instructions and methods of interrogation, the absolute prohibition of torture, and specific training for medical personnel on how to identify signs of torture, and cruel, inhuman or degrading treatment, in accordance with the Istanbul Protocol;

(c) Regularly evaluate the training provided to its law-enforcement officials as well as ensure regular and independent monitoring of their conduct; and

(d) Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Conditions of detention

(15) While noting that reforms of the prison system since 2004 include the construction of new facilities and reconstruction of existing facilities, the Committee is concerned about the current material conditions of detention, the problem of overcrowding in places of deprivation of liberty and the lack of independence of medical personnel in prisons. The Committee notes the statement by the delegation that no request by non-governmental organizations to monitor the institutions for the enforcement of prison sanctions was rejected, but is concerned that prior notice seems to be required to visit prisons. The Committee is also concerned that a system of inspection of the conditions of imprisonment by independent experts does not exist (art. 11).

The State party should:

(a) Ensure the speedy implementation of the prison system reform and, if necessary, seek technical assistance with the United Nations and other relevant organizations;

(b) Improve the material conditions of detention in places of deprivation of liberty, in particular with respect to hygienic conditions and medical care, including giving access to independent medical

personnel on a systematic basis. In this regard, it is important that the State party ensure that the Ministry of Health monitor the exercise of professional duties of medical staff in prisons; and

(c) Set up a system of inspection of the conditions of imprisonment by independent experts, as previously reiterated by the Committee in its recommendation under its article 20 report.

Torture and disability

(16) The Committee notes the State party's acknowledgement that poor and inadequate treatment takes place in some institutions and remains concerned at the reports of treatment of children and adults with mental or physical disability, especially at the forceful internment and long-term restraint used in institutions that amount to torture or cruel, inhuman and degrading treatment or punishment in social-protection institutions for persons with mental disability and psychiatric hospitals. The Committee is concerned that no investigation seems to have been initiated with respect to treatment of persons with disability in institutions amounting to torture or inhuman or degrading treatment (arts. 2, 12, 13 and 16).

The State party should:

(a) Initiate social reforms and alternative community-based support systems in parallel with the ongoing process of de-institutionalization of persons with disability, and strengthen professional training in both social-protection institutions for persons with mental disability and in psychiatric hospitals; and

(b) Investigate reports of torture or cruel, inhuman or degrading treatment or punishment of persons with disability in institutions.

Ethnic minorities, especially Roma

(17) The Committee, while noting the measures undertaken by the State party, including bringing criminal charges against persons on charges of ethnically motivated violence towards ethnic minorities and the Action Plan for Roma Education Improvement (2005), expresses concern at the failure to protect minorities, especially when political events indicate that they may be at heightened risk of violence (arts. 10, 12 and 16).

The State party should take all appropriate preventive measures to protect individuals belonging to minority communities from attacks especially when political events indicate that they may be at heightened risk of violence and ensure that the relevant existing legal and administrative measures are strictly observed. The State party should also ensure greater ethnic diversity in the police force to facilitate communication and contacts with all communities in Serbia and ensure that training curricula and information campaigns constantly communicate the message that violence will not be tolerated and will be sanctioned accordingly.

Compensation, rehabilitation and reparations

(18) The Committee notes information provided on compensation provided to certain war victims in the proceedings before the War Crime Chamber resulting from the Code of Criminal Procedure that also includes pecuniary compensation as well as the public apologies by the State party provided in 2003, 2004 and 2007. However, the Committee regrets the lack of a specific programme to implement the rights of victims of torture and ill-treatment to redress and compensation. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases, as well as the lack of information about other forms of assistance, including medical or psycho-social rehabilitation, provided to these victims. The Committee notes with concern the State party's statement that there are no services available in the State party to deal specifically with the treatment of trauma and other forms of rehabilitation for torture victims. Furthermore, the Committee is concerned at the lack of information about compensation, redress and rehabilitation for persons with disabilities (art. 14).

The State party should:

(a) Strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims of torture and other cruel, inhuman or degrading treatment or punishment with redress and fair and adequate compensation, including the means for as full rehabilitation as possible;

(b) Develop a specific programme of assistance in respect of victims of torture and ill-treatment;

(c) Provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes; and

(d) Strengthen its efforts in respect of compensation, redress and rehabilitation for persons with disabilities and provide in its next periodic report information about steps taken in this regard.

Domestic violence and sexual abuse of women and girls

(19) The Committee notes that domestic violence was defined as a misdemeanour in the adoption of the Misdemeanours Act (2007), but expresses concern over the prolonged proceedings, prompting many victims to abandon them. The Committee is concerned about reports that sexual abuse of girls has been on the rise in the past few years and at the low penalties that are pronounced against the perpetrators of domestic violence, the slowness of the proceedings, the lack of protection measures and the lack of adequate prevention measures in place (art. 16).

The State party should:

(a) Increase its efforts to ensure that urgent and efficient protection measures are put in place and to prevent, combat and punish perpetrators of violence against women and children, including domestic violence;

(b) Ensure adequate implementation of the national strategy to prevent domestic violence;

(c) Conduct broader awareness-raising campaigns and training on domestic violence for officials (judges, lawyers, law enforcement agencies, and social workers) who are in direct contact with the victims as well as for the public at large; and

(d) Take necessary measures to increase cooperation with NGOs working to protect victims from domestic violence.

Corporal punishment

(20) The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and that it is a common and accepted means of childrearing (art. 16).

The State party, taking into account the recommendation in the United Nations Secretary-General's Study on Violence Against Children, should adopt and implement legislation prohibiting corporal punishment in all settings, including the family, supported by the necessary awareness-raising and public education measures.

Trafficking in persons

(21) The Committee takes note of the inclusion of trafficking in the new Criminal Code (art. 389), which defines human trafficking and includes it as a criminal offence. However, the Committee is concerned about the reports of cross-border

trafficking in women for sexual and other exploitative purposes and it regrets the low number of prosecutions in this respect. The Committee also regrets that the State party does not have an effective system in place to monitor and assess the extent and impact to address this phenomenon effectively. The Committee is concerned at the decrease in the minimum penalties from five to three years of imprisonment and that redress and reintegration services are insufficient for victims of trafficking (art. 16).

The State party should:

(a) Continue to prosecute and punish perpetrators of trafficking in persons, especially women and children;

(b) Intensify its efforts to provide redress and reintegration services to victims;

(c) Conduct nationwide awareness-raising campaigns and conduct training for law-enforcement officials, migration officials and border police on the causes, consequences and incidences of trafficking and other forms of exploitation;

(d) Adopt a National Action Plan for combating human trafficking and ensure that programs and measures are put in place for treating children victims of trafficking; and

(e) Increase cooperation by the police and the Agency for Coordination of Protection of Human Trafficking Victims with NGOs working against human trafficking.

Kosovo

(22) In considering Serbia's initial report, the Committee takes note of the State party's explanation of its inability to report on the discharge of its implementation with regard to the Convention in Kosovo, owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK).

Data collection

(23) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions, and penal or disciplinary sanctions; and on pretrial detainees and convicted prisoners. The Committee further requests information on compensation and rehabilitation provided to the victims.

(24) The Committee invites the State party to become a party to the core United Nations human rights treaties to which it is not yet a party, namely: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(25) The Committee stresses that its recommendations derived from its review of Serbia and Montenegro under its inquiry procedure pursuant to article 20 are subject to follow-up. In this sense, the Committee reiterates its recommendations (A/59/44, paras. 213 (a) to (t)) and requests the State party to update the Committee with relevant information regarding steps taken to comply with its recommendations in its next periodic report.

(26) The Committee is encouraged by the oral information provided during the consideration of the State party's report with respect to outstanding follow-up information on individual communications, under article 22 of the Convention. The Committee notes that a new law provides for the reconsideration of a case on the basis of a decision of an international body established by an international treaty and welcomes a written response to the requests for specific follow-up to the Committee's views and compliance with the recommendations.

(27) Further to the ratification by the State party of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 September 2006, the Committee reminds the State party of its exigency to promptly designate or establish an independent national preventive mechanism for the prevention of torture, in line with articles 17 to 23 of the Optional Protocol.

(28) The Committee requests the State party to provide, within one year, information in response to the Committee's recommendations contained in paragraphs 6, 9, 11, 12, 13 and 16 (b) above.

(29) The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee through official websites, to the media and non-governmental organizations.

(30) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(31) The State party is invited to submit its next periodic report, which will be considered as the second periodic report, by 21 November 2012 at the latest.

46. Chad

(1) The Committee against Torture considered the initial report of Chad (CAT/C/TCD/1) at its 870th and 873rd meetings, held on 29 and 30 April 2009 (CAT/C/SR.870 and 873), and adopted the following conclusions and recommendations at its 888th meeting on 12 May 2009 (CAT/C/SR.888).

A. Introduction

(2) The Committee welcomes the report of Chad, which follows the Committee's guidelines for the preparation of initial reports, but regrets that the report was submitted 11 years late.

(3) The Committee notes with satisfaction the frankness with which the State party acknowledges the gaps in its legislation regarding the eradication and prevention of torture and, more generally, in its implementation of the Convention. The Committee appreciates the State party's efforts to identify the measures needed to rectify this situation. It also appreciates the constructive dialogue with the high-level delegation sent by the State party and the replies to the questions raised during the dialogue.

B. Positive aspects

(4) The Committee takes note of the encouraging political initiatives aimed at extricating the country from the crisis facing it, including the peace agreement signed on 25 October 2007 by the Government and the main Chadian armed opposition groups, and action to normalize relations between Chad and the Sudan as set out in the Dakar Agreement of 13 March 2008.

(5) The Committee is pleased to note that, pursuant to article 222 of the 1996 Constitution, as amended in 2005, the international instruments ratified by the State party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, take precedence over domestic laws.

(6) The Committee takes note of the proposed revision of the Criminal Code, which would incorporate provisions on the definition and criminalization of acts of torture and other cruel, inhuman or degrading treatment or punishment.

(7) The Committee welcomes the holding in 2003 of a justice summit, and notes with satisfaction that the six main lines of action in the judicial reform programme adopted in 2005 include training for judicial personnel, the fight against

corruption and impunity, and the harmonization of legal and judicial provisions with human rights treaties, notably by revising the Criminal Code and the Code of Criminal Procedure.

(8) The Committee also welcomes the promulgation in 2002 of Act No. 06/PR/2002 on the promotion of reproductive health, which sets out the right not to be subjected to torture or to cruel, inhuman or degrading treatment of a person's body in general and their reproductive organs in particular, and which prohibits, among other things, female genital mutilation, early marriage, domestic violence and sexual violence.

(9) The Committee takes note with satisfaction of the introduction of education in human rights and international humanitarian law in the syllabuses of the colleges of the national police, the national gendarmerie and army officers, as well as the establishment of the Reference Centre for International Humanitarian Law.

(10) The Committee welcomes the signing by the State party in 2006 of the Multilateral Agreement on Regional Cooperation and the regional Action Plan against Trafficking in Persons, especially Women and Children.

(11) The Committee welcomes the State party's ratification of the following:

(a) The Rome Statute of the International Criminal Court, in November 2006;

(b) The optional protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, in August 2002;

(c) The International Labour Organization (ILO) Convention concerning Minimum Age for Admission to Employment (No. 138, of 1973), in March 2005;

(d) The ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182, of 1999), in November 2000.

(12) The Committee welcomes the lifting of the immunity of the former Chadian Head of State, Hissène Habré, and the State party's clear determination to cooperate fully with the judicial authorities responsible for investigating and conducting proceedings against Mr. Habré.

C. Main subjects of concern and recommendations

Definition of torture

(13) The Committee is concerned at the absence of an explicit definition of torture in the current Criminal Code that would make acts of torture punishable under criminal law, in accordance with articles 1 and 4 of the Convention. While welcoming the bill to revise the Criminal Code, which does contain a definition of torture, the Committee is concerned that the definition is incomplete and is therefore not entirely in conformity with article 1 of the Convention (arts. 1 and 4).

> **The State party should urgently revise and adopt the bill amending and supplementing the Criminal Code so that the Code includes a definition of torture in conformity with article 1 of the Convention, as well as provisions criminalizing acts of torture and making them punishable by criminal penalties proportional to the seriousness of the acts committed.**

State of emergency

(14) The Committee notes with concern that Chadian criminal law does not currently contain any provisions guaranteeing the absolute and non-derogable nature of the prohibition of torture, and that numerous abuses, including cases of torture and enforced disappearance recognized by the State party, are committed during states of emergency (art. 2).

The State party should ensure that the principle of the absolute prohibition of torture is incorporated in its criminal legislation. The State party should also ensure the strict application of such legislation, in accordance with article 2, paragraph 2, of the Convention, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Due obedience

(15) The Committee notes with concern that article 143 of the Chadian Criminal Code, which establishes that any person who acts on the orders of a hierarchical superior shall be exempt from punishment, is not in conformity with the obligations stemming from article 2, paragraph 3, of the Convention (art. 2).

The State party should amend its legislation to explicitly state that an order from a superior officer or public authority may not be invoked as justification of torture.

Guarantees for detainees

(16) The Committee notes with concern that the current Code of Criminal Procedure does not provide fundamental legal guarantees for persons in detention. The Committee also regrets that the right to legal assistance for the poor, as provided for in article 47 of the Code of Criminal Procedure, is non-existent in practice. Moreover, the Committee is deeply concerned at the fact that the 48-hour limit for police custody is not observed in practice and at shortcomings in maintaining detention registers (arts. 2 and 11).

The State party should revise the Chadian Code of Criminal Procedure to include fundamental legal guarantees for all suspects during detention, including, in particular, the right of access to a lawyer, the right to be examined by an independent physician, the right to contact a relative or friend and the right to be informed of one's rights from the moment of detention, including the right to be informed of the charges and to be brought promptly before a judge. The State party should also guarantee the full enjoyment of these rights in practice, and should ensure that the limit on the period of custody is strictly applied, and that access to legal aid is available for the poorest. In addition, the authorities should systematically and regularly update detention registers, which should contain the name of every detainee, the identity of the officials carrying out the detention, the date of the detainee's admission and departure, and all other information needed for such registers.

Widespread use of torture and ill-treatment, especially during military operations

(17) The Committee is deeply concerned about:

(a) Persistent and consistent reports of torture and ill-treatment allegedly carried out by the State party's security forces and services, especially in district police stations, gendarmeries and remand centres, and the apparent impunity enjoyed by the perpetrators of such acts;

(b) Allegations that the newly formed environmental protection brigades and the brigade responsible for searching for weapons indulge in acts that contravene the Convention;

(c) The conclusions of the commission of inquiry into the events of February 2008, and conclusions drawn from other sources, which report summary and extrajudicial executions, rapes, kidnappings followed by enforced disappearance, torture and cruel, inhuman or degrading treatment, arbitrary arrests, intimidation and harassment of political opponents, human rights defenders and civilians. The Committee is particularly concerned about the fate of Mr. Ibni Oumar Mahamat Saleh, a political opponent and former minister who was arrested on 3 February 2008 and who has since disappeared;

(d) Reports that torture and ill-treatment are commonly used on prisoners of war and political opponents (arts. 2 and 12).

The State party should:

(a) Take immediate steps to guarantee in practice that all allegations of torture and ill-treatment are the subject of a thorough, prompt and impartial investigation and that the perpetrators of such acts are brought to trial and, if found guilty, sentenced to penalties proportional to the seriousness of the acts committed;

(b) Investigate the involvement of government agents, members of the armed forces and government security forces and allies of the Government in acts of torture, rape, enforced disappearance and other abuses committed during the events of February 2008;

(c) Investigate the activities of the environmental protection brigade and the brigade responsible for searching for weapons and ensure effective control over their future actions;

(d) Implement, as soon as possible, the recommendations of the commission of inquiry into the events of February 2008;

(e) Offer full reparation, including fair and adequate compensation for the victims of such acts, and provide them with medical, psychological and social rehabilitation.

Secret detention centres

(18) The Committee notes that secret places of detention are prohibited, but nevertheless expresses concern about the conclusions in the report of the commission of inquiry into the events of February 2008, which reveal the existence of secret places of detention run by State agents (arts. 2 and 11).

> **The State party should identify and order the closure of all illegal places of detention, order the immediate handover of anyone still detained in such places to the judicial authorities, and ensure that they enjoy all the fundamental guarantees for the prevention of and their protection from any act of torture and ill-treatment.**

(19) The Committee takes note of the Government's assurance regarding respect for general human rights principles by the National Security Agency (ANS), set up in 1993 to replace the Documentation and Security Directorate (DDS), a political police force described as "an engine of oppression and torture" by the commission of inquiry into former President Habré's crimes and abuses of power. The Committee notes with concern, however, that all the Agency's activities are treated as classified information and are not subject to any controls or evaluation (arts. 2 and 11).

> **In view of the traumatic memories left by the political police force that preceded the National Security Agency, the State party should ensure full transparency and should exercise effective control over the Agency's activities. The Committee recalls that the activities of all public institutions, including the National Security Agency, regardless of who carries them out, their nature or the place where they are carried out, are acts of the State party which fully engage its international obligations.**

Sexual violence and abuse

(20) The Committee is seriously concerned at the extent of sexual violence, including rape, against women and children, particularly in and around sites for displaced persons and refugee camps, committed with impunity whether by militias, armed groups, the armed forces or any other person. The Committee is also concerned that cases of rape are usually not dealt with as criminal offences but settled amicably, through financial compensation, under the supervision of tribal or village chiefs, and that the guilty parties are rarely brought to justice (arts. 2 and 16).

The State party should redouble its efforts to prevent, combat and punish sexual violence and abuse against women and children. To this end, the State party should, inter alia, and in collaboration with the United Nations Mission in the Central African Republic and Chad (MINURCAT) and United Nations specialized agencies in the field:

(a) Conduct major information campaigns to raise awareness among the population and all parties to the conflict that acts of sexual violence are offences under criminal law, to break the taboos on sex crimes and to eliminate the stigmatization and exclusion of victims, which discourages them from lodging a complaint;

(b) Continue with, and reinforce, the deployment of the Détachement intégré de sécurité (Integrated Security Detachment) (DIS) near sites for displaced persons and camps for refugees in order to guarantee protection for them, especially for women and children, to provide a simple mechanism for lodging complaints to which all have access and to ensure that complaints are systematically and immediately transmitted to the relevant authorities and that victims are protected;

(c) Set up a rehabilitation and assistance scheme for victims;

(d) Amend Act No. 06/PR/2002 on the promotion of reproductive health to include penalties for the perpetrators of sex crimes, or incorporate offences of sexual violence in the Criminal Code, providing for penalties proportional to the seriousness of the crimes;

(e) Ensure that customary laws and practices are not invoked to justify violating the absolute prohibition of torture, as the Committee recalled in its general comment No. 2 (2007) on implementation of article 2 by States parties.

Obligation to investigate and right to complain

(21) The Committee is concerned that the current Code of Criminal Procedure contains no provisions authorizing the judicial authorities to launch investigations in prima facie cases of acts of torture and ill-treatment. Moreover, the Committee is alarmed at information submitted by the State party indicating that there is often no follow-up to complaints of torture brought to the attention of the public prosecutor or investigating judge (art. 12).

The State party should revise the Code of Criminal Procedure to include clear provisions on the obligation of the competent authorities to systematically launch objective and impartial investigations, without consultation and without first receiving a complaint from the victim, whenever there are reasonable grounds for believing that an act of torture has been committed.

Impunity

(22) The Committee expresses serious concern about:

(a) The fact that credible allegations of acts of torture and ill-treatment are rarely the subject of investigations or judicial proceedings and that the perpetrators are rarely convicted or, when they are, are given light sentences that do not reflect the seriousness of their crimes;

(b) The climate of impunity for the perpetrators of acts of torture, including for members of the armed forces, the police, the National Security Agency, the former Documentation and Security Directorate and other State bodies, particularly when these are highly placed officials who reportedly planned, ordered or perpetrated acts of torture, notably during the regime of Hissène Habré or during the armed conflicts in 2006 and 2008;

(c) The fact that the judicial investigation under way since October 2000 into the alleged accomplices of Hissène Habre has still not been the subject of any procedural action or judicial decision;

(d) The absence of any measures to protect the complainant and witnesses from ill-treatment or intimidation once they have filed a complaint or statement, which means that only a small number of complaints are filed for acts of torture or cruel, inhuman or degrading treatment (arts. 12 and 13).

The State party should demonstrate firm commitment to eliminating the persistent problem of torture and impunity. It should:

(a) Publicly and unambiguously condemn the use of all forms of torture, addressing in particular members of the forces of law and order, the armed forces and prison staff, and including in its statements clear warnings that any person committing such acts, participating in them or acting as an accomplice shall be held personally responsible before the law and shall be liable to criminal penalties;

(b) Take immediate steps to ensure that in practice all allegations of torture and ill-treatment are the subject of prompt, impartial and effective investigations and that those responsible - law enforcement personnel and others - are prosecuted and punished. Investigations should be conducted by a fully independent body;

(c) In prima facie cases of torture, suspects should be systematically and immediately suspended from duty for the duration of the investigation, particularly if there is a risk that they might otherwise be in a position to obstruct the investigation;

(d) Ensure that, in practice, complainants and witnesses are protected from any ill-treatment and acts of intimidation related to their complaint or testimony.

Non-refoulement

(23) The Committee is concerned at the absence of a legislative framework regulating expulsion, refoulement and extradition consistent with the requirements of article 3 of the Convention. In addition, the Committee is particularly concerned at the fact that the State party's current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture (art. 3).

The State party should adopt a legislative framework regulating expulsion, refoulement and extradition and revise its current procedures and practices in order to fulfil its obligations under article 3 of the Convention.

The State party should also review the terms of the 1961 General Agreement on Cooperation in Judicial Matters and all other judicial cooperation agreements so as to ensure that the transfer of detainees to another signatory State is carried out under a judicial procedure and in strict compliance with article 3 of the Convention.

Administration of justice

(24) The Committee is concerned at the numerous shortcomings in the Chadian justice system which undermine the right to prompt and impartial examination of cases and the right to reparation and compensation, and which promote impunity. The Committee regrets in particular that the shortcomings highlighted in 2005 by the independent expert on the situation of human rights in Chad, namely the dependence of the judiciary upon the executive, the scarcity of physical and human resources and the climate of insecurity affecting certain judges, continue to apply (E/CN.4/2005/121, para. 5). The Committee notes with concern that because of understaffing among professional judges, sub-prefects have been given the powers of district judges. Moreover, allegations have been received of corruption among judges, police officers and gendarmes and of a lack of training for judicial personnel. The Committee is also concerned that responsibility for the

appointment and promotion of judges rests entirely with the President, which jeopardizes the independence of the judiciary (arts. 2, 13 and 14).

To address the shortcomings in the administration of justice, the State party should:

(a) Urgently implement the Justice Reform programme approved in 2005 and request the support of the international community to that end;

(b) Provide appropriate training for all judicial personnel in order to address the shortage of judges and ensure, to the extent possible, that professional judges are deployed to all judicial districts;

(c) Pursue and intensify anti-corruption efforts, including by adopting the necessary legislative and operational measures;

(d) Ensure that the judiciary is fully independent, in accordance with relevant international standards.

Living conditions in places of detention and systematic monitoring of places of detention

(25) While taking note of the efforts made by the State party to improve prison conditions, the Committee remains deeply concerned about the deplorable living conditions in places of detention. The Committee has received reports of prison overcrowding, "inmate self-government" in places of detention, corruption, lack of hygiene and insufficient food, health risks and inadequate health care, and violation of inmates' right to visits. The Committee is concerned about reports of a failure to separate juvenile from adult prisoners and persons awaiting trial from convicted prisoners. It is also concerned at the reference in legislation governing pretrial detention to the undefined concept of a "reasonable" period and at reports that some persons awaiting trial have been detained in a remand centre for a period longer than the sentence incurred (arts. 11 and 16).

The State party should take urgent measures to bring conditions of detention in gendarmeries, police stations and remand centres into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, in particular by:

(a) Reducing prison overcrowding, including by considering non-custodial forms of detention, and, in the case of children in conflict with the law, by ensuring that detention is only used as a measure of last resort;

(b) Improving the food and the health care provided to detainees;

(c) Reorganizing prisons so that persons awaiting trial are detained separately from convicted prisoners and improving the conditions of detention for minors, ensuring that they are detained separately from adults in all circumstances;

(d) Reducing the frequency and duration of incarceration of persons awaiting trial, including by amending the Code of Criminal Procedure in order to set a maximum length of pretrial detention;

(e) Taking appropriate measures to put a definitive end to alleged corruption and ransom demands in prisons;

(f) Strengthening judicial supervision of conditions of detention.

(26) The Committee notes with satisfaction that some non-governmental organizations (NGOs) have been granted permanent authorization to visit N'Djamena remand centre, but regrets that such access is not granted to all places of

detention and that it is restricted to announced, accompanied visits with no possibility of communicating with detainees. The Committee notes the mandate entrusted to the National Human Rights Commission to monitor places of detention, but regrets that this body is unable to do so (art. 11).

> **The State party should adopt all appropriate measures to enable NGOs to carry out periodic, independent, unannounced and unrestricted visits to places of detention. The State party should also provide all the human and financial resources necessary to enable the National Human Rights Commission to effectively carry out its mandate.**

National Human Rights Commission

(27) The Committee notes with concern that the National Human Rights Commission is no longer operational, owing in particular to a lack of human and financial resources. Furthermore, the Committee regrets that the Commission does not comply with the Paris Principles in respect of its membership, lack of independence and lack of pluralism (arts. 2, 11 and 13).

> **The State party should, as a matter of extreme urgency, take the necessary organizational and budgetary measures to make the National Human Rights Commission operational and ensure that it complies with the Paris Principles (General Assembly resolution 48/134, annex).**

Reparation and compensation

(28) The Committee regrets the National Assembly's failure as yet to follow up on the bill proposed in 2005 by the Association of Victims of Crimes and Political Repression (AVCRP), which recommended the establishment of a compensation fund for victims of the abuses committed by the regime of President Hissène Habré. Moreover, the Committee notes the absence of a reparation programme or other national reconciliation measures such as that proposed in 1992 by the commission of inquiry into the crimes and abuses of power committed by former President Habré and his accomplices (art. 14).

> **The State party should, as a matter of great urgency, adopt the bill on material compensation for the victims of torture under the Hissène Habré regime and establish appropriate mechanisms to meet the victims' legitimate needs for justice and to promote national reconciliation.**

Confessions obtained under duress

(29) The Committee is concerned at the lack of legal provisions explicitly prohibiting the use as evidence in judicial proceedings of confessions and statements obtained by torture. It is alarmed by reports from the State party indicating that confessions obtained by torture are invoked as a form of evidence in proceedings and that such practices persist owing to the impunity of guilty parties and pressures on judges (art. 15).

> **The State party should amend the Code of Criminal Procedure to explicitly prohibit the use of any statement obtained by torture as a form of evidence in judicial proceedings.**
>
> **The State party should take the necessary measures to ensure that criminal convictions are based not only on the confession of the accused but also on other, legally obtained evidence, thus allowing the judge to exercise full discretion. It should also take the necessary measures to ensure that statements made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention.**
>
> **The State party is requested to review criminal convictions based solely on confessions in order to identify instances of wrongful conviction based on evidence obtained through torture or ill-treatment and to take appropriate remedial measures.**

Violence against women

(30) While welcoming the promulgation of Act No. 06/PR/2002 to eradicate female genital mutilation, early marriage, domestic violence and sexual violence (the most severe form of female genital mutilation, infibulation, is practised in eastern Chad), the Committee remains concerned about the widespread occurrence of traditional practices which violate the physical integrity and human dignity of women and girls. The Committee also notes with concern that Act No. 06/PR/2002 does not provide penalties for perpetrators of such crimes and that no decree giving effect to this legislation has yet been drafted (art. 16).

> **The State party should pursue its awareness-raising efforts and implement existing legislative measures to combat traditional practices that constitute cruel, inhuman or degrading treatment of women and girls. The State party should amend Act No. 06/PR/2002 to ensure that it stipulates appropriate penalties reflecting the seriousness of the abuse, and as soon as possible draft a decree to give effect to that Act, and bring the perpetrators to justice.**

Protection of children from cruel, inhuman or degrading treatment

(31) While taking note of the State party's efforts, including at the legislative level, to eliminate ill-treatment of children and, in particular, to prevent their economic exploitation, the Committee remains alarmed at the persistence of these practices and regrets the lack of information provided on their scale (arts. 2, 12 and 16).

> **The State party should take effective measures to combat and eradicate the exploitation and degradation of children and ensure the protection of children, in particular of the most vulnerable children, including child livestock-herders, *muhajirin* and child domestic workers.**

(32) While noting that corporal punishment in schools is prohibited in the State party's legislation, the Committee remains concerned at the absence of legislation prohibiting it within the family, in alternative care institutions and as a disciplinary measure in penal institutions. The Committee is also concerned at the frequent resort to this practice in education, in particular in Koranic schools (art. 16).

> **The State party should extend legislation prohibiting corporal punishment to apply also to families, educational and religious establishments, alternative care institutions and places of juvenile detention. The State party should ensure that the legislation prohibiting corporal punishment is strictly enforced, and should conduct awareness-raising and educational campaigns to that end.**

(33) The Committee is concerned at reports of children being kidnapped by traffickers and removed abroad. It is also concerned at reports from the State party suggesting that trafficking in children is widespread. It regrets the lack of information or statistics on these phenomena and on any related prosecutions and convictions (art. 16).

> **The State party should take all possible measures to protect children from trafficking and to ensure that traffickers are prosecuted without delay.**

Child soldiers

(34) The Committee welcomes the protocol of agreement signed by the State party and the United Nations Children's Fund (UNICEF) in April 2007 on the liberation and sustainable reintegration of all children involved in armed groups in Chad. The Committee nevertheless remains deeply concerned at the continued and, according to some allegations, increased recruitment of child soldiers by all parties to the conflict, in particular in sites for displaced persons and refugee camps. The Committee also regrets that only a small number of children have been demobilized since the signing of the agreement with UNICEF, including only very few of the children involved in the Chadian armed forces (art. 16).

The State party should:

(a) With the support of the United Nations and civil society, draft a time-bound plan of action to prevent the illicit recruitment of child soldiers and to facilitate their rehabilitation and reintegration into society and institute transparent procedures for the liberation and monitoring of the demobilization of children involved in armed groups operating in Chadian territory;

(b) Criminalize the illicit recruitment and use of children in armed conflicts;

(c) Investigate and prosecute persons responsible for recruiting child soldiers in order to put an end to impunity;

(d) Launch a public information campaign to ensure that all members of the armed forces are aware of Chad's international obligations to prevent the use and recruitment of child soldiers in armed conflicts;

(e) Authorize the verification by United Nations-led teams of the presence of children in military camps, training centres and detention centres, as agreed by the State party in May 2008 during the visit of the Special Representative of the Secretary-General for Children and Armed Conflict;

(f) Ensure that refugee camps and sites for displaced persons are of a civilian and humanitarian nature and increase the security and protection of civilian populations both within and around them, given that such measures help in preventing the recruitment of children and in protecting them.

Training on the prohibition of torture

(35) While acknowledging the State party's significant efforts to provide human rights training to public officials, the Committee is concerned that the information, education and training provided to military and law-enforcement personnel and prison staff, army personnel, judges and prosecutors are inadequate and do not cover all the provisions of the Convention, in particular the non-derogable nature of the prohibition of torture and the prevention of cruel, inhuman or degrading treatment or punishment. The Committee also notes with concern that medical personnel working in detention facilities receive no specific training in how to detect signs of torture and ill-treatment (art. 10).

The State party should strengthen its training programmes for all law-enforcement and army personnel on the absolute prohibition of torture and other ill-treatment, as well as those for prosecutors and judges on the State party's obligations under the Convention. The programmes should include the inadmissibility of confessions and statements obtained as a result of torture.

The State party should also ensure that all medical personnel working with detainees receive adequate training on detecting signs of torture or ill-treatment, in accordance with international standards as set out in the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

(36) The Committee notes the State party's acceptance of the recommendation made in the course of the universal periodic review to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to establish a national prevention mechanism (A/HRC/WG.6/5/L.4, para. 82)[1] and encourages it to take all necessary measures to that end.

(37) The Committee recommends that Chad should make declarations under articles 21 and 22 of the Convention.

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[1] The final document will be issued under symbol number A/HRC/12/5 (http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TDSession5.aspx).

(38) The Committee encourages the State party to involve NGOs, United Nations experts in the field and academic experts in the review of domestic legislation, including the draft criminal code, to bring it into line with the provisions of the Convention. The State party should take the necessary steps to adopt the draft code without delay.

(39) The Committee encourages the State party to continue its cooperation with MINURCAT and to seek technical cooperation from the Office of the United Nations High Commissioner for Human Rights in zones that do not fall within the mandate of MINURCAT, in order to implement the recommendations of the Committee, in particular those contained in paragraphs 27 and 35 above, and to embark on the reforms needed to consolidate the rule of law.

(40) The State party should establish effective mechanisms to collect data and produce statistics on criminal justice and crime and all statistics relevant to monitoring implementation of the Convention at the national level. The State party should thus provide in its next periodic report the following data, which will facilitate the Committee's assessment of the implementation of obligations arising from the Convention:

(a) Statistics on the capacity and population of every prison in Chad, including data disaggregated by sex and by age group (adults/children) and the number of pretrial detainees;

(b) Statistics on violence in detention centres, police stations and gendarmeries;

(c) Statistics on complaints of alleged torture, and action taken;

(d) Statistics on corruption among law-enforcement officials and penalties imposed;

(e) Statistics on cases of extradition, expulsion and refoulement;

(f) Statistics on violence against women and children and outcomes of proceedings instituted.

(41) The State party is encouraged to disseminate widely its reports to the Committee, as well as the Committee's concluding observations, in appropriate languages and by all appropriate means, including through the media and NGOs.

(42) The Committee invites the State party to update its core document (HRI/CORE/1/Add.888) in accordance with the harmonized guidelines on reporting, approved recently by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.5).

(43) The Committee requests the State party to provide it with information on follow-up to the Committee's recommendations contained in paragraphs 13, 17, 22, 24, 28 and 34 above, within one year.

(44) The Committee requests the State party to submit its second periodic report by 15 May 2012.

47. Chile

(1) The Committee considered the fifth periodic report of Chile (CAT/C/CHL/5) at its 877th and 879th meetings, held on 4 and 5 May 2009 (CAT/C/SR.877 and 879), and adopted the following concluding observations at its 891st meeting (CAT/C/SR.891).

A. Introduction

(2) The Committee welcomes the fifth periodic report of Chile and expresses its appreciation for the constructive dialogue it has had with the high-level delegation and for the frank and clear written replies provided to the questions raised by the Committee.

(3) The Committee notes with satisfaction that in the period since its consideration of the fourth periodic report of the State party, the latter has ratified:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force for the State party on 11 January 2009;

(b) The International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) on 15 September 2008.

(4) The Committee welcomes the efforts being made by the State party to amend its legislation and adapt its legal system to guarantee application of the principles contained in the Convention. The Committee also welcomes the Government's commitment to preparing a new criminal code that will include an improved definition of the offence of torture.

(5) The Committee also takes note with appreciation of the constitutional reforms introduced in 2005 and welcomes the full application of the new Code of Criminal Procedure throughout the country.

(6) The Committee also welcomes the efforts made to date by the State party to establish the truth and secure reparation and access to justice in relation to the serious human rights violations committed in the country during the dictatorship.

(7) The Committee welcomes the news that the Convention is being invoked directly before national courts in numerous complaints concerning offences such as the use of torture which have been lodged by victims of political imprisonment and torture by the dictatorship.

(8) The Committee also welcomes the news that in 2008 the Forensic Medical Service created a unit within its Human Rights Programme devoted to the implementation of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

(9) The Committee also welcomes the decision taken by the State party to extradite former Peruvian President Alberto Fujimori to Peru.

C. Principal subjects of concern and recommendations

Definition, punishment and imprescriptibility of torture

(10) Notwithstanding the State party's assertion that the Chilean Criminal Code punishes all acts that can be described as torture within the meaning of article 1 of the Convention, the Committee remains concerned that, despite its previous recommendations, the definition of torture in the State party is still not fully in line with the provisions of article 1 of the Convention. The Committee also considers that the Criminal Code fails to encompass all of the acts defined as punishable in the Convention, such as attempted torture. Furthermore, given the grave nature of the offence of torture, the Committee is concerned, as already mentioned in its previous concluding observations, that the 10-year statute of limitations for that offence has not been extended or abolished. While appreciating the proposal for a bill to provide an interpretation of article 93 of the Criminal Code, regarding grounds for exemption from criminal liability, the Committee is concerned that the proposal has not been accepted (arts. 1 and 4).

> **The State party should take the necessary steps to ensure that all acts of torture referred to in articles 1 and 4 of the Convention are classified as offences in its domestic criminal legislation and that appropriate penalties are applied in each case, taking into account the grave nature of such offences. The Committee also urges the State party to abolish the statute of limitations currently applicable to the offence of torture.**

Punishment of international crimes

(11) The Committee welcomes the bill which would define crimes against humanity, genocide and war crimes as offences, and particularly welcomes article 40 of the bill, which would establish the imprescriptibility of all such crimes. However, the Committee is concerned at the delay in adopting the bill (art. 2).

> **The Committee urges the State party to pass into law the bill establishing the imprescriptibility of the above-mentioned crimes.**

Amnesty Decree-Law No. 2.191

(12) The Committee notes that the Chilean courts, and in particular the Supreme Court, are handing down judgements in which they rule that the Amnesty Decree-Law (under which people who committed human rights violations between 11 September 1973 and 10 March 1978 cannot be punished) is inapplicable, citing international human rights instruments as the legal basis for that finding. Nonetheless, the Committee feels that, in line with the ruling of the Inter-American Court of Human Rights in the case of *Almonacid Arellanos y otros* of 26 September 2006, the fact that this decree-law remains in force leaves the application of the amnesty up to the judgement of the domestic courts. The Committee has learned of recent Supreme Court decisions that appear to take the existence of that decree-law into account, particularly in reducing the applicable penalties for serious crimes committed during the dictatorship (art. 2).

> **The Committee recommends that, in keeping with its earlier recommendations, the State party abrogate the Amnesty Decree-Law. The Committee draws the State party's attention to paragraph 5 of its general comment No. 2 on the implementation of article 2 of the Convention by States parties, wherein it considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability. The Committee also recommends that all necessary steps be taken to ensure that cases of torture and other cruel, inhuman or degrading treatment or punishment be thoroughly and promptly investigated in an impartial manner, that the culprits be subsequently tried and punished, and that steps be taken to compensate victims in accordance with the Convention.**

Allegations of torture

(13) The Committee is concerned about continuing allegations that serious crimes have been committed by on-duty police officers and regrets that efforts to publicize such acts are subject to legal restrictions, which are a contributing factor to the failure to punish such crimes (arts. 2 and 12).

> **The Committee recommends that the State party introduce legislative reforms relating to supervision of the police force as soon as possible with a view to ensuring that no action on the part of the police force that is contrary to the Convention goes unpunished and that the investigations of such acts are effective and transparent. The State party should reinforce educational programmes in order to ensure that all law enforcement personnel are fully aware of the provisions of the Convention.**
>
> **The Committee also recommends that the State party continue to expedite the measures required for the creation of the Ministry of Public Security, which would oversee the Carabineros and the Investigative Police Force.**

Reform of military justice

(14) The Committee is concerned about the delay in the State party's adoption of the reform of the Code of Military Justice, which the Committee has repeatedly recommended (art. 2).

The Committee recommends that the State party expedite the adoption of reforms to the Code of Military Justice which will limit the material and personal jurisdiction of military courts. The Committee reaffirms its recommendation that the State party expurgate the principle of due obedience from the Code of Military Justice.

Records of complaints

(15) While the Committee takes note of the system used in the Public Prosecutor's Office for recording reports and procedures relating to crimes of torture, the Committee is concerned that the system does not contain disaggregated information on victims and that it is therefore not possible to arrive at a determination regarding reports of and convictions for torture of women (art. 13).

The Committee recommends that the State party develop a record-keeping system that provides information on crimes of torture that is disaggregated by, inter alia, the victim's sex and age.

Creation of a national human rights institute

(16) The Committee notes that the bill to create a national human rights institute defines that body's duties as including the preservation of the memory and history of what took place in the State party in terms of human rights violations. Given the fact that the original bill was submitted in 2005, however, the Committee is concerned about the delay in securing passage of this bill, which is still being reviewed by the Joint House of Deputies/Senate Commission (art. 2).

The State party should take the necessary steps to expedite passage of the bill to create a national human rights institute. The Committee also recommends to the State party that this body be established in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), which are annexed to General Assembly resolution 48/134, in order to ensure its autonomy, independence, pluralistic nature, stability, competence and representative character.

Purview and actions of the Commission on Political Prisoners and Torture

(17) The Committee notes and welcomes the State party's efforts regarding recognition of the State's responsibility for the crimes of torture which occurred during the dictatorship. The Committee values the work of the National Commission on Political Prisoners and Torture (Valech Commission), but feels that its initial objective has not been fully attained. In this connection, the Committee is pleased that the bill to create a national human rights institute provides for recommencement of the work done to classify cases involving victims of torture and political prisoners (art. 13).

The Committee urges the State party to reopen the Commission on Political Prisoners and Torture or to promptly set up another body to take up the Commission's mandate. In order to fulfil the requirement that victims of torture during the dictatorship receive compensation, the Committee recommends that:

(a) Effective action is taken to publicize the mandate and work of the Commission or the body to be created for the same purpose so that everybody who was a victim of torture during the dictatorship will be aware of its existence, particularly those who are in remote or underprivileged areas or are not in the country. The Committee urges the State party to make use, inter alia, of the media and consular offices in countries where former Chilean exiles reside in order to accomplish this;

(b) Sufficiently ample deadlines are set so that all people who believe they have been victims of torture can present their cases;

(c) All cases corresponding to the definition of torture set forth in article 1 of the Convention are included;

(d) The determining criteria are reconsidered, especially with regard to all victims who were tortured when they were minors or while outside national territory or who reside outside the State party;

(e) Sexual violence is included as a form of torture.

Programme of Compensation and Comprehensive Health Care

(18) The Committee takes note of the fact that, in the State party, torture victims have access to the Programme of Compensation and Comprehensive Health Care (PRAIS) system and is pleased that this programme has been extended to cover the entire country. The Committee also welcomes the programme's cooperation with such organizations as the Centro de Salud Mental y Derechos Humanos (Centre for Mental Health and Human Rights) (CINTRAS), the Corporación de Defensa de los Derechos del Pueblo (Committee for the Defence of the People's Rights) (CODEPU), the Instituto Latinoamericano de Salud Mental y Derechos Humanos (Latin American Mental Health and Human Rights Institute) (ILAS) and the Fundación de Ayuda Social de las Iglesias Cristianas (Christian Churches Social Aid Foundation) (FASIC). It is, however, concerned that victims of torture living outside the country do not have the benefit of this programme (arts. 14 and 16).

The Committee recommends that the State party take into consideration the obligation to ensure redress for all victims of torture and that it consider concluding cooperation agreements with countries where they reside so that they may have access to the kind of medical treatment required by victims of torture.

The Committee further urges the State party to take steps to ensure the necessary funding so that each team from PRAIS or another organization can give effective care to all those entitled to it. The Committee urges the State party to incorporate a gender policy encompassing training and awareness-raising for the officials responsible for dealing with the cases of victims of assault or sexual violence. The Committee recommends that the State party increase its efforts in regard to reparation, compensation and rehabilitation so as to ensure fair and appropriate reparation for all victims of torture.

Impunity

(19) The Committee is concerned at the continuing impunity of those who perpetrated the crime of torture under the dictatorship and at the fact that suitable measures have not been taken to prosecute and sentence them (arts. 2 and 12).

The State party should take the necessary steps to investigate, prosecute and impose appropriate punishments on those who have committed human rights violations, including torture. The Committee urges the State party to provide the courts with all relevant information at its disposal in order to help them administer justice. The Committee also urges the State party to repeal the provision contained in Act No. 19.992 under which information on the practice of torture during the dictatorship is to remain classified for 50 years.

Istanbul Protocol

(20) The Committee welcomes the establishment by the Forensic Medical Service of a unit devoted to the implementation of the Istanbul Protocol. It also welcomes the activities undertaken by the State party to publicize the Protocol. The Committee is, however, concerned that, according to some reports, such initiatives have not covered all medical personnel involved in dealing with cases of torture and that due importance has not been placed on medical examinations carried out in accordance with the Istanbul Protocol (arts. 10 and 12).

The Committee recommends that the State party redouble its efforts to ensure that all medical personnel involved in the detection of cases of torture are aware of the content of the Istanbul Protocol and are trained in its application. The Committee also recommends that the State party take the necessary steps to ensure

that reports prepared in accordance with the Protocol are widely disseminated among medical professionals dealing with cases of torture.

Conditions of detention

(21) The Committee notes the efforts made by the State party to improve conditions in prisons, especially in respect of infrastructure, including the construction of new facilities. The Committee is, however, concerned about reports it has received regarding the persistence of shortcomings in the prisons, particularly with regard to material conditions, overcrowding, and mistreatment and the use of unjustified punishments in enforcing the disciplinary regime (art. 16).

The State party should:

(a) Adopt effective measures to improve material conditions in the prisons, reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty;

(b) Establish a national prevention mechanism that is authorized to carry out periodic visits to detention centres in order to fully implement the Optional Protocol to the Convention against Torture;

(c) Establish security measures that are in keeping with respect for the dignity of persons deprived of their liberty, which entails doing away with isolation cells.

Deprivation of liberty in the case of adolescents

(22) The Committee takes note of the efforts that the State party has made to improve the regime governing the deprivation of liberty in the case of adolescents. Nevertheless, the Committee is concerned about some shortcomings in centres where adolescents are held, such as serious overcrowding, the failure to separate different categories of inmates and an inadequate supply of basic services. The Committee is also concerned by reports of excessive use of force and the use of isolation as a punishment in such centres (art. 16).

The State party should:

(a) Take the necessary steps to ensure that adolescents are deprived of their liberty only as a measure of last resort;

(b) Ensure that adolescents deprived of their liberty have access to workshops and training courses and to an adequate supply of basic services, especially as regards health care. It should also ensure that adolescents deprived of their liberty are provided with proper legal aid when they need it;

(c) Eliminate any possibility that disciplinary measures, especially measures amounting to isolation, might be applied without due process;

(d) Take steps to combat overcrowding in these centres;

(e) Ensure that the law on the criminal responsibility of adolescents requires that the treatment they receive is in accordance with international standards and principles.

Indigenous peoples

(23) The Committee takes note of the text of the constitutional amendment now before Congress which accords recognition to indigenous peoples. The Committee also welcomes the establishment of an ombudsman's office for indigenous peoples specializing in criminal matters. Nevertheless, the Committee is concerned by the many reports that it has received regarding the continuing commission of abusive acts by police officers against members of indigenous

peoples, especially members of the Mapuche people. The Committee is particularly concerned by the fact that the victims of these acts include women, children and older persons. The Committee also notes with concern that the State party has on occasion applied the Counter-Terrorism Act to members of indigenous peoples in connection with acts of social protest (art. 16).

The State party should:

(a) Take all necessary steps to carry out prompt and effective investigations into abuses committed against members of indigenous peoples and to bring to trial and punish any police officers who commit such abuses;

(b) Provide detailed statistics, with breakdowns by age, sex and geographical location, on all complaints of acts of torture or ill-treatment committed by law enforcement officers against members of indigenous peoples, as well as on the corresponding investigations, trials and convictions;

(c) Provide detailed data on the cases involving indigenous persons in which the Counter-Terrorism Act has been applied.

(24) The Committee is concerned about reports indicating that a number of people who were imprisoned during the dictatorship, tortured, and later forced to leave the country continue to be deprived of the possibility to return (art. 16).

The Committee recommends that the State party reconsider the status of these people and give serious consideration to the possibility of permitting them to return to Chile.

Reparation

(25) The Committee takes note of the information provided to it concerning the compensation paid by the National Commission on Political Prisoners and Torture to persons recognized as having been victims of torture during the dictatorship. The Committee is, however, concerned that not all the victims have enjoyed the right to fair and adequate reparation. The Committee considers that the fact that some victims do not reside in the State party should not constitute an impediment to their access to reparation (art. 14).

The Committee reaffirms the State party's obligation to ensure that all victims of acts of torture have the right to fair and adequate reparation. The State party should ensure that all persons who were victims of acts of torture during the dictatorship, including those not currently in the State party, can have access to adequate reparation commensurate with the gravity of the crime committed against them.

(26) The Committee requests the State party to include detailed information in its next periodic report on the steps it has taken to comply with the recommendations contained in these concluding observations. The Committee recommends to the State party that it should take all appropriate steps to implement these recommendations, including their conveyance to the members of the Government and Congress for consideration and adoption of the necessary measures.

(27) The Committee recommends that the State party widely disseminate the reports it submits to the Committee, together with these conclusions and recommendations, in, inter alia, the indigenous languages, through the media, official websites and non-governmental organizations.

(28) The Committee requests the State party to inform it within one year of the steps taken in pursuance of the recommendations contained in paragraphs 12-14, 18 and 25.

(29) The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting (HRI/GEN/2/Rev.5).

(30) The State party is invited to submit its sixth periodic report by 15 May 2013 at the latest.

48. **Honduras**

(1) The Committee against Torture considered the initial report of Honduras (CAT/C/HND/1) at its 880th and 882nd meetings (CAT/C/SR.880 and 882), held on 6 and 7 May 2009, and adopted, at its 893rd meeting (CAT/C/SR.893), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the initial report of Honduras and commends the State party for its frank and open assessment on the implementation of the Convention in the State party. Nevertheless, it regrets that the initial report was submitted with a 10-year delay. The Committee notes with satisfaction the constructive efforts made by the multisectoral State party delegation to provide additional information and explanations during the dialogue.

B. Positive aspects

(3) The Committee welcomes the ratification of the following international instruments:

(a) Convention on the Rights of Persons with Disabilities and the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty (18 April 2008);

(b) International Convention for the Protection of All Persons from Enforced Disappearance (1 April 2008);

(c) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (1 April 2008);

(d) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (23 May 2006);

(e) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (9 August 2005);

(f) Rome Statute of the International Criminal Court (1 July 2002);

(g) Convention on the Elimination of All Forms of Racial Discrimination (10 October 2002);

(h) The two Optional Protocols to the Convention on the Rights of the Child (18 May and 14 August 2002).

(4) The Committee welcomes the fact that the death penalty is not in use in the State party.

(5) The Committee notes with satisfaction that the State party has extended invitations to several special procedures mechanisms, such as the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention.

(6) The Committee notes with satisfaction the ongoing efforts of the State party to reform its legislation, policies and procedures in order to ensure better protection of human rights, in particular the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, notably:

(a) The adoption on 28 September 2008 of the National Preventive Mechanism Act;

(b) The adoption of the new Code of Criminal Procedure, which came into force in 2002 and introduced a new system of proceedings based on oral and public hearings.

C. Principal subjects of concern and recommendations

Definition of torture

(7) While noting the criminalization of torture by amendment to the Honduran Criminal Code in 1996, the Committee is concerned that the national legislation is not yet fully harmonized with the Convention, as article 209-A of the Honduran Criminal Code does not contain intimidation, or coercion of the victim or a third person and discrimination of any kind as a purpose or reason for inflicting torture. It further lacks provisions criminalizing torture inflicted at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee also notes that, in contravention of article 1 of the Convention, the Honduran Criminal Code allows for adjustments in the sanction depending on the pain or suffering inflicted. The Committee notes that the crimes of coercion, discrimination and ill-treatment are prohibited in other articles of the Criminal Code; it however expresses concern at the different sanctions provided for those crimes (art. 1).

> **The Committee encourages the State party to continue its commitment to revise the definition of torture contained in article 209-A of the Honduran Criminal Code and recommends that the provision be harmonized in strict conformity with article 1 of the Convention. It further recommends that the State party make torture an imprescriptible offence.**

(8) The Committee further notes with concern that members of the armed forces are not included as public officials in the definition of torture in article 209-A of the Honduran Criminal Code and that there exists a parallel definition in article 218 of the Military Code, however carrying significantly lower sanctions (art. 1).

> **The State party should abolish any parallel legislation on the criminalization of torture and harmonize the sentences for the crime of torture by any public official, including members of the armed forces, as foreseen in article 1 of the Convention.**

Fundamental safeguards

(9) The Committee notes that the new Code of Criminal Procedure contains fundamental safeguards, including the right not to be subjected to ill-treatment or torture during detention. While noting a certain increase in the number of public defenders and the draft legislation to enhance their independence, the Committee is concerned that in light of the high percentage of recourse to public defenders, their number may be inadequate. The Committee is further concerned that allegations of ill-treatment and torture are investigated by the police itself and that an independent and external oversight mechanism for alleged unlawful acts committed by the police does not exist. The Committee is also concerned that, in practice, law enforcement officials, in particular the preventive police, often do not respect fundamental legal safeguards, such as to promptly inform the detainee of the reason for arrest, the right of a detainee to access a lawyer and to access an examination by an independent doctor within 24 hours of detention and the right to contact his or her family. The Committee is also concerned at the obstacles experienced by medical professionals to exercise their duties, such as limited access to places of detention for reporting on possible torture and other cruel and inhuman or degrading treatment or punishment, including the application of internationally accepted guidelines for such reporting (arts. 2 and 11).

> **The State party should ensure that an independent oversight mechanism for alleged unlawful acts committed by all agents of the State is set up. The State party should ensure that, in practice, all detainees are immediately informed of the reason for arrest, that the right to access a lawyer and to contact a family member is respected and that all detainees undergo a medical examination within 24 hours of their detention. The State party should also take urgent measures to eliminate all obstacles experienced by its medical professionals in the exercise of their duties and to establish adequate guidelines for its medical**

professionals to report systematically on findings of torture and other cruel and inhuman or degrading treatment or punishment.

Independence of the judiciary

(10) The Committee expresses concern at the State party's failure to establish an independent body to safeguard the independence of the judiciary and to supervise the appointment, promotion and regulation of the profession (arts. 2 and 12).

The State party should guarantee the full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146 of December 1985) and establish an independent body to safeguard the independence of the judiciary and to supervise the appointment, promotion and regulation of the profession.

Enforced or involuntary disappearances

(11) While welcoming the State party's invitation of the Working Group on Enforced or Involuntary Disappearances in 2007, the Committee expresses concern at the absence of full reparation for victims and families of enforced or involuntary disappearances under former authoritarian governments before 1982 and, in general, at insufficient investigation, punishment and compensation for these crimes. It further regrets that the State party has not established a truth and reconciliation commission. Moreover, the Committee expresses concern at reports of new cases of enforced and involuntary disappearances, including of children. The Committee further regrets that the Honduran Criminal Code does not contain a specific provision punishing the crime of enforced or involuntary disappearance (arts. 2, 4 and 16).

The Committee reiterates the recommendations by the Working Group on Enforced or Involuntary Disappearances and is concerned that they have not been fully implemented. The Committee urges the State party to take swift measures to ensure progress in the search of the missing persons, to establish a comprehensive programme of reparation and compensation for the victims and their families, to prevent new instances of enforced or involuntary disappearance and to amend the Honduran Criminal Code in line with the Convention for the Protection of All Persons from Enforced Disappearance.

Extrajudicial killings, including of children

(12) The Committee takes note of the establishment of a special unit for the investigation of violent deaths of children within the Honduran Institute for Children and the Family, as well as the establishment of the Municipal Children's Ombudsman's Office, in charge of addressing ill-treatment and abuse of children. It is, however, very concerned at persistent reports of a high number of extrajudicial killings, particularly of children, as well as of members of the judiciary and at the information that some victims of extrajudicial killings appear to have been tortured before being killed. It is also very concerned at the absence of effective, thorough and impartial investigations of these incidents (arts. 2, 12 and 16).

The State party should take urgent measures to prevent extrajudicial killings, particularly of children, as well as of members of the judiciary, and ensure that thorough impartial investigations of allegations of extrajudicial killings are carried out systematically, and that those responsible are swiftly prosecuted and adequately punished. It further recommends systematic disaggregated data collection on all incidents of violence, including against children.

Trafficking in persons

(13) The Committee recognizes the efforts made by the State party to address trafficking in women and children, such as the prohibition of trafficking for commercial sexual exploitation in the Criminal Code and in the Anti-Trafficking Act. However, the Committee is concerned about persistent reports of internal and cross-border trafficking in women and children for both sexual and other exploitative purposes and it regrets that the legal provisions do not cover trafficking for

reasons other than sexual purposes and that officials suspected of trafficking activities are not properly investigated (arts. 2, 10 and 16).

> **The State party should ensure that offenders are prosecuted and punished for the crime of trafficking in persons, and amend the Criminal Code to include all exploitative purposes of trafficking. The State party should continue to conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation. The Committee further recommends that the State party increase its efforts to seek international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking.**

Pretrial detention

(14) While noting the progress made by the State party since the adoption of the new Code of Criminal Procedure in abolishing the obligatory pretrial detention and establishing the "*juez de ejecución*", whose mandate is to monitor the legality of remand detention, the Committee is very concerned at reports of frequent ill-treatment and torture, excessive use of force on arrest, as well as acts of extortion by law enforcement officials and at the persistent high numbers of detainees, both children and adults, in prolonged pretrial detention. It further expresses concern at the various forms of derogations from the general rule for the duration of pretrial detention. The Committee regrets the lack of use, in practice, of alternatives to imprisonment (arts. 2, 11 and 16).

> **The State party should take effective measures to send a clear and unambiguous message to all levels of the law enforcement hierarchy that torture, ill-treatment, excessive use of force and extortion are unacceptable, and ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duties. The State party should further take appropriate measures to increase the number of "*jueces de ejecución*", to further reduce the duration of remand detention and derogations thereof, as well as detention before charges are brought. The Committee also urges the State party to implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences.**

Training

(15) The Committee notes with appreciation the detailed information provided by the State party on training programmes and sessions for law enforcement officials, the judiciary, prison staff, health-care specialists and psychologists, etc. However, the Committee regrets the limited information on monitoring and evaluation of these training programmes and the lack of available information on how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

> **The State party should further develop educational programmes to ensure that all officials, including law enforcement officials and prison staff, are fully aware of the provisions of the Convention and its Optional Protocol, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant personnel should receive specific training on how to identify signs of torture and ill-treatment. The Committee recommends that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) become an integral part of the training provided to physicians. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture and ill-treatment.**

Conditions of detention

(16) The Committee welcomes the monitoring of places of detention through regular visits by the Ministry of Public Affairs, together with members of the National Human Rights Commission and civil society. It further welcomes the decisions by the Supreme Court on five habeas corpus applications and the efforts made by the State party to implement the Court's recommendations. Nevertheless, the Committee is very concerned at reports of high numbers of deaths in custody that have not been investigated. It further regrets the absence of a professionally staffed penitentiary system independent from the National Police.

The State party should investigate promptly, thoroughly and impartially all incidents of death in custody and provide adequate compensation to the families of victims. The State party should further undertake necessary reforms to create an independent penitentiary system.

(17) The Committee is concerned at the poor conditions of detention, including overcrowding, at times lack of drinking water, insufficient provision of food, poor sanitary conditions, as well as the failure to separate accused persons from convicted ones, women from men and children from adults, in rural areas as well as in police holding cells. Furthermore, the Committee is concerned at the occurrence of inter-prisoner violence and lack of statistical data that may provide a breakdown by relevant indicators to facilitate the determination of root causes and the design of strategies to prevent and reduce such occurrences (arts. 11 and 16).

The Committee recommends that the State party:

(a) Continue its efforts to alleviate overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the increase of budgetary allocations to develop and renovate the infrastructure of prisons and other detention facilities;

(b) Take effective measures, including by allocation of budgetary resources, to improve living conditions in all detention facilities;

(c) Ensure the separation in all places of detention of convicts from prisoners on remand, men from women and children from adults;

(d) Monitor and document incidents of inter-prisoner violence with a view to revealing root causes and designing appropriate prevention strategies, and provide the Committee with data thereon, disaggregated by relevant indicators;

(e) Ensure the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

Persons with mental impairment or illnesses deprived of their liberty

(18) The Committee notes with concern that only two detention centres are equipped with hospitals, which, however, do not have the capacity to tend to persons with mental impairment or illnesses. It further regrets the absence of an effective system of referral to specialists, as well as a policy to provide care in the civilian system (arts. 11 and 16).

The State party should enhance health services in places of detention to include services for persons with mental impairment or illnesses deprived of their liberty. It further recommends that the State party establish an effective and functioning system for referrals to mainstream health-care institutions or professionals.

"Unlawful associations"

(19) The Committee notes discussions in the State party on changing the provision on "unlawful associations" in article 332 of the Criminal Code. It is however concerned that a suspected member of an "unlawful association" can be arrested without an arrest warrant and that his/her detention on remand is mandatory. It is further concerned at the repressive social policy in combating "unlawful associations", or "*maras*" or "*pandillas*", which does not adequately consider the root causes of the phenomenon and may criminalize children and young people on the sole ground of their appearance (arts. 11 and 16).

> **The State party should revise article 332 of its Criminal Code and ensure that legal safeguards are provided without discrimination to all persons under arrest or detention. It further recommends that the State party undertake steps to monitor and document the phenomenon of "unlawful associations" with a view to revealing root causes and designing appropriate prevention strategies.**

Impunity and absence of prompt, thorough and impartial investigations

(20) The Committee notes with concern the existence of widespread impunity, acknowledged even by the State party, as one of the main reasons for its failure to eradicate torture. It is particularly concerned at the absence of an independent body to investigate allegations of ill-treatment and torture. The Committee is concerned at reports of several cases of serious allegations against members of the National Police that remain at the investigation stage and for which perpetrators have not effectively been brought to justice and at reports that alleged perpetrators continue exercising their duties. Moreover, the Committee is concerned at the killing of two environmentalists, whose perpetrators escaped from prison after being sentenced, and at the absence of any investigation or conviction of the instigators of the crime (arts. 12, 13 and 16).

> **The Committee urges the State party to take swift measures to counter impunity, including by:**
>
> **(a) Ensuring prompt, thorough, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;**
>
> **(b) Bringing the perpetrators to justice and imposing appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention;**
>
> **(c) Ensuring that an investigation is lodged against the instigators of the murder of the two environmentalists and that they are sentenced accordingly once identified. Furthermore, the State party should thoroughly investigate the escape from prison of the convicted perpetrators, ensure that they serve their sentence according to their conviction and, in general, take measures to prevent further escapes.**

Violence against women

(21) The Committee notes the establishment, in 2006, of the Inter-institutional Commission on Femicide and the Special Investigation Unit to investigate violent deaths of women within the Public Prosecutor's Office. It also notes the creation of a gender unit within the National Police. Nonetheless, the Committee is very concerned at the prevalence of many forms of violence against women and girls, including sexual abuse, domestic violence and femicide, and at the absence of thorough investigations into the incidence of violence against women (arts. 12, 13 and 16).

The State party should increase its efforts to ensure that urgent and efficient protection measures are put in place to prevent, combat and punish perpetrators of violence against women and children, including sexual abuse, domestic violence and femicide, and conduct widespread awareness-raising campaigns and training on violence against women and girls for officials (judges, lawyers, law enforcement agents, and social workers) who are in direct contact with the victims, as well as for the public at large.

(22) The Committee is also concerned at reports of inspections of female private parts when entering a place of detention, in particular at the fact that such inspections may be carried out by unqualified persons, including by personnel without medical training (art. 16).

The Committee emphasizes that inspections of female private parts can constitute cruel or degrading treatment and that the State party should take measures to ensure that they are carried out only when necessary, by trained medical professionals and in taking the greatest care to preserve the dignity of the woman being examined.

Compensation and rehabilitation

(23) The Committee regrets the lack of a specific programme to implement the rights of victims of torture and ill-treatment to receive adequate reparation and compensation. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases, as well as the lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (arts. 12 and 14).

The State party should:

(a) Strengthen its efforts in respect of reparation, compensation and rehabilitation in order to provide victims of torture and other cruel, inhuman or degrading treatment or punishment with fair and adequate reparation and compensation, including the means for as full a rehabilitation as possible;

(b) Develop a specific programme of assistance in respect of victims of torture and ill-treatment.

(24) The Committee is concerned at the insufficient prosecution and sentencing of those criminally responsible for crimes against humanity, including possible acts of torture, committed under the authoritarian regime that governed until 1982. The Committee is also concerned at the lack of information on reparation, rehabilitation and other measures provided to the victims (arts. 12 and 14).

The Committee considers that the absence of prosecution and provision of adequate reparation, including rehabilitation, to victims contribute to a failure of the State party to meet its obligations under the Convention to prevent torture and ill-treatment. The State party should ensure prompt, impartial and thorough investigations into all such acts, prosecute and punish perpetrators with appropriate penalties which take into account the seriousness of their acts, and offer reparation to victims, including rehabilitation measures, as well as taking steps to prevent impunity.

Human rights defenders, environmentalists and political activists

(25) Despite the State party's affirmation that interim protection measures are adopted upon the request of human rights defenders, environmentalists and political activists who claim to be in danger, the Committee is concerned about reports of persisting acts of harassment and persecution, including threats, murders and other human rights violations, experienced by human rights defenders, environmentalists and other political activists, and about the fact that such acts go unpunished (art. 16).

The State party should adopt effective measures to prevent and protect human rights defenders, environmentalists and other political activists from any further violence. Furthermore, the State party should ensure the prompt, thorough and effective investigation and appropriate punishment of such acts.

Data collection

(26) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on trafficking in persons and domestic and sexual violence. The Committee also regrets the lack of statistics in respect of inter-prisoner violence (arts. 12, 13 and 16).

The State party should establish an effective system to gather all relevant statistical data in order to monitor the implementation of the Convention at national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, inter-prisoner violence, trafficking in persons and domestic and sexual violence. The Committee recognizes the implications in terms of confidentiality of gathering personal data and emphasizes that appropriate measures should be taken to ensure that there is no misuse of data collected.

(27) The Committee invites the State party to ratify the principal United Nations human rights treaties to which it is not yet a party, namely the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

(28) The Committee invites the State party to submit its core document in accordance with the requirements for the preparation of a common core document established in the harmonized reporting guidelines approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(29) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(30) The State party is encouraged to disseminate widely its report submitted to the Committee and the Committee's concluding observations, through official websites, the media and non-governmental organizations.

(31) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 11, 13, 14, 18 and 19 above.

(32) The State party is invited to submit its second periodic report by no later than 15 May 2013.

49. Israel

(1) The Committee considered the fourth periodic report of Israel (CAT/C/ISR/4) at its 878th and 881st meetings (CAT/C/SR.878 and 881), held on 5 and 6 May 2009, and adopted, at its 893rd meeting (CAT/C/SR.893), the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the fourth periodic report of Israel, which is in conformity with the Committee's guidelines for reporting.

(3) The Committee expresses its appreciation for the extensive written responses to its list of issues (CAT/C/ISR/Q/4 and Add.1), which provided important additional information, and for the oral responses to the numerous questions raised

and concerns expressed during the consideration of the report. The Committee also appreciates the expert delegation of the State party and the open and comprehensive dialogue conducted.

B. Positive aspects

(4) The Committee welcomes that, in the period since the consideration of the last periodic report (CAT/C/54/Add.1), the State party has ratified the following instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

(5) The Committee notes with appreciation the decisions of the Supreme Court of Israel on the case *Yisacharov v. The Head Military Prosecutor et. al.*, C.A. 5121/98, which calls for the exclusion of a confession or evidence obtained unlawfully or in violation of a defendant's right to fair procedure; and the case *Physicians for Human Rights et al. v. Minister of Public Security*, HCJ 4634/04, declaring that the State of Israel must provide a bed to every prisoner held in an Israeli prison as a basic condition for living in dignity.

(6) The Committee also notes with appreciation the enactment of the Israel Security Agency Law No. 5762-2002, regulating the mandate, scope and function of this institution and regularizing its activities so that it is supervised by and reports to a Ministerial Committee and other official bodies.

(7) The Committee welcomes the appointment of the Israel Prison Service as the authority in charge of many Israeli detention facilities, some of which were formerly controlled by the military and the police.

(8) Additionally, the Committee welcomes the State party's affirmation that training concerning the Convention and the prohibition of torture is conducted in courses for security, police and military officials, including with regard to the Supreme Court's 1999 ruling on the prohibition on torture, affirming that "these prohibitions are 'absolute'. There are no exceptions to them and there is no room for balancing."

(9) The Committee notes again, with appreciation, the way in which public debate ensues on such sensitive matters as torture and ill-treatment of detainees, both in Israel and the occupied Palestinian territories. It welcomes the State party's cooperation with non-governmental organizations that provide relevant reports and information to the Committee and encourages the State party to further strengthen its cooperation with them with regard to the monitoring and implementation of the provisions of the Convention. In this connection, the Committee also notes with appreciation the prompt judicial review of persons under detention upon their petition to the Supreme Court, and the role of non-governmental organizations in facilitating and lodging such appeals.

C. Factors and difficulties impeding the application of the Convention

(10) The Committee is fully aware of the situation of unrest prevailing in Israel and in the occupied Palestinian territories. The Committee reiterates its recognition of the State party's legitimate security concerns and its duty to protect its citizens and all persons under its jurisdiction or de facto control from violence. However, the Committee recalls the absolute nature of the prohibition of torture contained in article 2, paragraph 2, of the Convention, stating that "no exceptional circumstances whatsoever may be invoked as a justification of torture".

(11) The Committee notes the State party's continued argument that the Convention is not applicable to the West Bank or the Gaza Strip and the claim that this position stems inter alia from longstanding legal considerations that encompass the original drafting history of the Convention as well as from changed practical developments since Israel's last appearance before the Committee, including the 2005 withdrawal of Israeli forces from the Gaza Strip, the dismantling of

its military government and its evacuation of over 8,500 civilians from Gaza. In addition, the Committee notes the State party's argument that the 'law of armed conflict' is the *lex specialis* legal regime that takes precedence. However, the Committee recalls its general comment No 2 (2007) that State parties' obligation to prevent acts of torture or ill-treatment in any territory under its jurisdiction must be interpreted and applied to protect any person, citizen or non-citizen, without discrimination subject to the de jure or de facto control of a State party. The Committee further notes (a) that the State party and its personnel have repeatedly entered and established control over the West Bank and Gaza; (b) that, as acknowledged by the State party's representatives during the dialogue with the Committee, security detainees from the area are, in substantial numbers, detained in prisons within the boundaries of the State of Israel; and (c) that Israel admittedly maintains "full jurisdiction" over cases of violence in the territories by Israeli settlers against Palestinians. Thus, the State party maintains control and jurisdiction in many aspects on the occupied Palestinian territories. Furthermore, the Committee notes with appreciation the State party's affirmation that "an Israeli official is liable to Israel's criminal jurisdiction for any unlawful conduct committed inside or outside the territory of Israel, provided that the official operates within his official capacity". As to the *lex specialis* argument, the Committee recalls that it considers that the application of the Convention's provisions are without prejudice to the provisions of any other international instrument, pursuant to paragraph 2 of its articles 1 and 16. Additionally, the Committee considers that, as stated by the International Court of Justice in its Advisory Opinion, international human rights treaties ratified by the State party, including the Convention, are applicable in the occupied Palestinian territories.[2]

(12) In any event, the Committee notes that the State party has acknowledged that its actions in the West Bank and Gaza warrant scrutiny. It also notes that the State party has responded to and elaborated on many questions regarding the West Bank and Gaza posed by the Committee in the written list of issues and the oral discussion.

D. Principal subjects of concern and recommendations

Definition of torture

(13) The Committee notes the State party's explanation that all acts of torture are criminal acts under Israeli law. Nevertheless, the Committee reiterates its concern expressed in its previous concluding observations that a crime of torture as defined in article 1 of the Convention has not been incorporated into Israeli domestic legislation.

> **The Committee reiterates its previous recommendation that a crime of torture as defined in article 1 of the Convention be incorporated into the domestic law of Israel.**

Defense of "Necessity"

(14) Notwithstanding the State party's assurances that following the Supreme Court's decision in H.C.J. 5100/94, *Public Committee against Torture in Israel v. The State of Israel* determined that the prohibition on the use of "brutal or inhuman means" is absolute, and its affirmation that "necessity defense" is not a source of authority for an interrogator's use of physical means, the Committee remains concerned that the "necessity defense" exception may still arise in cases of "ticking bombs", i.e., interrogation of terrorist suspects or persons otherwise holding information about potential terrorist attacks. The Committee further notes with concern that, under Section 18 of the Israel Security Agency (ISA) Law 5762-2002, "an ISA employee (.) shall not bear criminal or civil responsibility for any act or omission performed in good faith and reasonably by him within the scope and in performance of his function". Although the State party reported that Section 18 has not been applied to a single case, the Committee is concerned that ISA interrogators who use physical pressure in "ticking bomb" cases may not be criminally responsible if they resort to the necessity defense argument. According to official data published in July 2002, 90 Palestinian detainees had been interrogated under the "ticking bomb" exception since September 1999.

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[2] International Court of Justice, *Legal consequences of the construction of a wall in the Occupied Palestinian Territories*, Advisory opinion of 9 July 2004.

The Committee reiterates its previous recommendation that the State party completely remove *necessity* as a possible justification for the crime of torture. The Committee requests that the State party provide detailed information on the number of "ticking bomb" Palestinian detainees interrogated since 2002.

Basic safeguards for detainees

(15) The Committee is concerned that while the Criminal Procedure Law and the Prisons Ordinance stipulate conditions under which detainees are entitled to meet promptly with a lawyer, these can be delayed, subject to written requests, if it puts the investigation at risk, prevents disclosure of evidence, or obstructs the arrest of additional suspects, and security-related offenses or terrorism charges permit further delays. Notwithstanding the safeguards provided by law and reaffirmed by the Supreme Court of Israel in its 2006 decision on the case *Yisacharov v The Head Military Prosecutor et. al.*, C.A. 5121/98, for ordinary cases, there are repeated claims of insufficient legal safeguards for security detainees. The Committee also notes with concern that the 2006 Criminal Procedure Law allows detention for up to 96 hours of persons suspected of security offenses before being brought before a judge - although the State party claims a majority of cases are brought within 14 hours - and up to 21 days without access to a lawyer - despite the State Party's claim that more than 10 days is "seldom used".

The Committee calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. The Committee also emphasizes that detainees should have prompt access to a lawyer, an independent doctor and family member, these are important means for the protection of suspects, offering added safeguards against torture and ill-treatment for detainees, and should be guaranteed to persons accused of security offenses.

(16) While appreciating the adoption of the Criminal Procedure (Interrogating Suspects) Law of 2002, which requires that all stages of a suspect's interrogation be recorded by video camera, the Committee notes with concern that the 2008 amendment to this law exempts interrogations of detainees accused of security offenses from this requirement. The State party has justified this on budgetary limitations and stated that the exemption of security-related suspects will only apply until December 2010.

Video recording of interrogations is an important advance in protection of both the detainee and, for that matter, law enforcement personnel. Therefore, the State party should, as a matter of priority, extend the legal requirement of video recording of interviews of detainees accused of security offenses as a further means to prevent torture and ill-treatment.

Administrative detention and solitary confinement

(17) The Committee has expressed concern that administrative detention does not conform to article 16 of the Convention because, among other reasons, it is used for "inordinately lengthy periods." Administrative detention thus deprives detainees of basic safeguards, including the right to challenge the evidence that is the basis for the detention. Warrants are not required and the detainee may be de facto in incommunicado detention for an extended period, subject to renewal. While the State party explains that this practice is used only exceptionally when confidentiality make it impossible to present evidence in ordinary criminal proceedings, the Committee regrets that the number of persons held in administrative detention has risen significantly since the last periodic report of the State party. According to the State party, 530 Palestinians are being held in administrative detention under Israeli security legislation and, according to non-governmental sources, as many as 700. The Committee also notes with concern that the Unlawful Combatants Law No. 5762-2002, as amended in August 2008, allows for the detention of non-Israeli citizens falling into the category of "unlawful combatants", who are described as "combatants who are believed to have taken part in hostile activity against Israel, directly or indirectly" for a period of up to 14 days without any judicial review. Detention orders under this law can be renewed indefinitely; evidence is neither made available to the detainee nor to his lawyer and, although the detainees have the right to petition to the Supreme Court, the charges against them are also reportedly kept secret. According to the State party, 12 persons are detained under this law at present.

The State party should review as a matter of priority its legislation and policies to ensure that all detentions, and particularly administrative detentions in the West Bank and Gaza Strip, are brought into conformity with article 16 of the Convention.

(18) The Committee is concerned at reports received by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism of solitary confinement used by prison authorities as a means of encouraging confessions from minors or as a punishment for infractions of prison rules. It is alleged that security detainees are kept in interrogation facilities, ranging from three to six square meters, with no windows or access to daylight or fresh air.

The Committee once again calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. The State party should amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards.

Allegations of torture and ill-treatment by Israeli interrogators

(19) The Committee is concerned that there are numerous, ongoing and consistent allegations of the use of methods by Israeli security officials that were prohibited by the September 1999 ruling of the Israeli Supreme Court, and that are alleged to take place before, during and after interrogations. According to the State party, there were 67 investigations opened by the Inspector for Complaints against ISA interrogators in 2006, and 47 in 2007, but none resulted in criminal charges.

The State party should ensure that interrogation methods contrary to the Convention are not utilized under any circumstances. The State party should also ensure that all allegations of torture and ill-treatment are promptly and effectively investigated and perpetrators prosecuted and, if applicable, appropriate penalties are imposed. The Committee reiterates that, according to the Convention, "no exceptional circumstances", including security or war or threat to security of the State, justify torture. The State party should intensify human rights education and training activities to security officials, including training on the prohibition of torture and ill-treatment.

Complaints and need for independent investigations

(20) The Committee notes that, out of 1,185 complaints investigated by the Israeli police for improper use of force during 2007, 82 criminal procedures have been initiated. The State party has noted the difficulty in investigating this type of complaints arguing that police officers are authorized to use reasonable force in the necessary cases.

The Committee requests information on the number of criminal procedures that have resulted in convictions of the accused and the penalties imposed.

(21) While noting the State party's clarification that "every claim regarding the use of allegedly impermissible means of interrogation is examined by the Inspector for Complaints," the Committee is concerned that none of the over 600 complaints of ill-treatment by ISA interrogators received by the Inspector of Complaints between 2001 and 2008 has resulted in a criminal investigation. Although under supervision of the Attorney General, the Inspector of Complaints is an ISA employee. The Committee notes that, according to information received by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, out of 550 examinations of torture allegations initiated by the General Security Services (GSS) inspector between 2002 and 2007, only 4 resulted in disciplinary measures and none in prosecution. While the State party's representatives explained that there is a lack of evidence for pursuing and substantiating these complaints, and that the persons submitting them are engaged in a "campaign" alleging false information, the Committee has been informed by non governmental organizations that there is a decline in the number of complaints submitted, allegedly due to a sense of futility based on the absence of indictments and a sense of de facto impunity.

The State party should duly investigate all allegations of torture and ill-treatment by creating a fully independent and impartial mechanism outside ISA.

Non-refoulement and risk of torture

(22) While the Committee is aware of the fact that Israel hosts increasing numbers of asylum-seekers and refugees on its territory, and whereas the principle of non-refoulement under article 3 of the Convention has been recognized by the High Court as a binding principle, the Committee regrets that this principle has not been formally incorporated into domestic law, policy, practices or procedure. The responses submitted by the State party all refer only to its obligations under the 1951 Convention Relating to Refugees and its 1967 Protocol, but do not even allude to its distinct obligations under the Convention.

The principle of non-refoulement should be incorporated into the domestic legislation of the State party, so that the asylum procedure includes a thorough examination of the merits of each individual case under article 3 of the Convention. An adequate mechanism for the review of the decision to remove a person should also be in place.

(23) The Committee notes with concern that, under article 1 of the draft amendment to the 1954 Infiltration to Israel Law (Jurisdiction and Felonies) Act, which was passed on 19 May 2008 in first reading by the Knesset, any person having entered Israel illegally is automatically presumed to constitute a risk to Israel's security and falls within the category of "infiltrator" and can therefore be subjected to this law. The Committee is concerned that article 11 of this draft law allows Israeli Defence Forces (IDF) officers to order the return of an "infiltrator" to the State or area of origin within 72 hours, without any exceptions, procedures or safeguards. The Committee considers that this procedure, void of any provision taking into account the principle of non-refoulement, is not in line with the State party's obligations under article 3 of the Convention. The Israeli Government reported 6,900 "infiltrators" during 2008.

The Committee notes that the draft amendment to the Infiltration to Israel Law, if adopted, would violate article 3 of the Convention. The Committee strongly recommends that this draft law be brought in line with the Convention and that, at a minimum, a provision be added to ensure an examination into the existence of substantive grounds for the existence of a risk of torture. Proper training of officials dealing with immigrants should be ensured, as well as monitoring and review of those official's decisions to ensure against violations of article 3.

(24) The Committee notes with concern that, on the basis of the "Coordinated Immediate Return Procedure", established by Israeli Defense Force order 1/3,000, IDF soldiers at the border - whom the State party has not asserted have been trained in legal obligations under the Convention - are authorized to execute summary deportations without any procedural safeguards to prevent refoulement under article 3 of the Convention.

The Committee notes that such safeguards are necessary for each and every case whether or not there is a formal readmission agreement or diplomatic assurances between the State party and the receiving State.

Prohibition of unlawful or coerced evidence

(25) While welcoming the Supreme Court decision *Prv. Yisascharov v the Head Military Prosecutor et al*, C.A. 5121/98, which laid down the doctrine of exclusion of unlawfully obtained evidence, the Committee notes that the question of determining whether or not to admit such evidence is left to the discretion of the judge.

The State party should prohibit by law that any statement which is established to have been made as a result of torture cannot be invoked as evidence in any proceedings against the victim, in line with article 15 of the Convention.

Detention facility 1391

(26) Notwithstanding the information from the State party that ISA secret detention and interrogation facility known as "Facility 1391" has not been used since 2006 to detain or interrogate security suspects, the Committee notes with concern that several petitions filed to the Supreme Court to examine the facility were rejected and that the Supreme Court has found that Israeli authorities acted reasonably in not conducting investigations on allegations on torture and ill-treatment and poor detention conditions in the Facility.

> **The State party should ensure that no one is detained in any secret detention facility under its control in the future, as a secret detention center is *per se* a breach of the Convention. The State party should investigate and disclose the existence of any other such facility and the authority under which it has been established. It should ensure that all allegations of torture and ill-treatment by detainees in Facility 1391 be impartially investigated, the results made public, and any perpetrators responsible for breaches of the Convention be held accountable.**

Juvenile detainees

(27) While noting the State party's argument that several measures are being implemented to ensure children's rights, including the preparation of a draft bill on the establishment of a new youth court, the Committee remains concerned at the differing definitions of a child in Israel - where legal age is attained at the age of 18 - and in the occupied Palestinian territories - where legal age is attained at 16. The Committee notes the State party's explanation that Palestinian juveniles under age 18 are treated as minors when imprisoned within the State of Israel. Nonetheless, it expresses deep concern at reports from civil society groups that Palestinian minors are detained and interrogated in the absence of a lawyer or family member and allegedly subjected to acts in breach of the Convention in order to obtain confessions. The Committee is further concerned by the allegations that approximately 700 Palestinian children annually were charged under military orders and prosecuted by Israeli military courts and that 95 per cent of these cases have relied on confessions as evidence to obtain a conviction.

> **Military order No. 132 should be amended to ensure that the definition of minor is set at the age of 18, in line with international standards.**

(28) The Committee also notes with concern that all but one of the prisons where Palestinian juveniles are detained, are located in Israel, which hinders prisoners from receiving family visits, not only because of the distances, but also since some relatives have been denied necessary permits for security reasons, in 1,500 out of 80,000 cases, according to the State party and more often according to non-governmental sources.

> **The State party should ensure that juvenile detainees are afforded basic safeguards, before and during interrogations, including prompt access to an independent lawyer, and independent doctor and family member from the outset of their detention. Furthermore, the State party should ensure that cases against juveniles are not decided solely on the basis of confessions, and that the establishment of a youth court is completed as a matter of priority. In addition, every effort should be made to facilitate family visits to juvenile detainees, including by expanding the right to freedom of movement of relatives.**

Use of force or violence during military operations

(29) Notwithstanding the ongoing indiscriminate rocket attacks against civilians in southern Israel which reportedly provoked Israel to exercise its right to defend its population by launching operation "Cast Lead" against Hamas in the Gaza Strip, the Committee is concerned over the insufficient measures taken by the State party to protect the civilian population of the Gaza Strip and to prevent the harm, including many hundreds of deaths, of Palestinian civilians, including minors, caused as a result of the Israeli military operation. A report of nine United Nations experts describes civilians, including medical workers–16 having allegedly been killed and 25 injured while on duty. As confirmed by Israeli investigators, there were severe effects on civilians as a result of Israeli weaponry containing phosphorus, although it was

reportedly aimed to create smoke screens or uncover tunnel entrances in Gaza. Notwithstanding the State party's argument that this weapon is not banned by international humanitarian law and was not aimed at personnel, the Committee is concerned about its use in a densely populated area and the severe pain and suffering that this weapon caused, including deaths of persons who reportedly could not be duly treated at hospitals in Gaza, which were unable to provide palliative services for several reasons, including a lack of proper knowledge of the weaponry employed, as well as being used as headquarters, command centres and hiding places for Hamas attacks.

> **The State party should conduct an independent inquiry to ensure a prompt, independent and full investigation into the responsibility of state and non-state authorities for the harmful impact on civilians, and to make the results public.**

(30) The Committee has received reports that the "blockade" imposed on the Gaza Strip, especially aggravated since July 2007, has obstructed the distribution of humanitarian aid before, during and after the recent conflict, and has limited other human rights of the inhabitants, particularly the right to freedom of movement, of both juveniles and adults.

> **The State party should reinforce its efforts to ensure that humanitarian aid is accessible to ease the suffering of Gaza inhabitants as a result of the restrictions imposed.**

(31) Notwithstanding the State party's legitimate security concerns, the Committee is seriously concerned at the many allegations provided to the Committee from non-governmental sources on degrading treatment at checkpoints, undue delays and denial of entry, including for persons with urgent health needs.

> **The State party should ensure that such security controls are conducted in accordance with the Convention. In this regard, the State party should provide sufficient and adequate training for personnel to avoid unnecessary stress on persons travelling through checkpoints. The State party should consider, as a safety measure, establishing an urgent complaints mechanism for any persons claiming they have been subjected to undue or improper threats or behaviors. Further, consideration should be given as a matter of urgency to the availability of emergency medical personnel to assist persons in need.**

Settler violence

(32) The Committee notes with interest the State party's acknowledgement that "Israel has full jurisdiction" over cases of settler violence in the West Bank against Palestinians. It appreciates the statistics provided regarding the criminal enforcement of such matters as disorderly conduct, land disputes, and the overall increase in law enforcement involving Israelis, including investigations and indictments as well as administrative measures limiting movement of Israeli settlers who may endanger the lives and security of Palestinians. While appreciating that a special inter-ministerial committee has been created to address these cases, and to coordinate among the IDF, the Police, the State Attorney's Office, and the ISA, the Committee expresses concern about such violence, especially its rising number.

> **Any allegation of ill-treatment by Israeli settlers, like others under the State party's jurisdiction, should be promptly and impartially investigated, those responsible be prosecuted and, if found guilty, appropriately punished.**

House demolitions

(33) While recognizing the authority of the State party to demolish structures that may be considered legitimate military targets according to international humanitarian law, the Committee regrets the resumption by the State party of its policy of purely "punitive" house demolitions in East Jerusalem and the Gaza Strip despite its decision of 2005 to cease this practice.

> **The State party should desist from its policies of house demolitions where they violate article 16 of the Convention.**

Allegations of torture and ill-treatment by Palestinian forces

(34) According to reports before the Committee, both Hamas security forces in Gaza and Fatah authorities in the West Bank have carried out arbitrary arrests, abductions and unlawful detentions of political opponents, denied them access to a lawyer and subjected detainees to acts of torture and ill-treatment. Reportedly, those detained have been denied, inter alia, basic due process rights and the right to prompt and effective investigations. Additionally, an increase in such incidents, including deliberate maiming, as well as extrajudicial killings, was reported to have been conducted by Hamas forces in Gaza, allegedly against Fatah security services officials or persons suspected of collaboration with Israeli forces, during and after Operation Cast Lead.

> **The Palestinian authorities in the West Bank should take immediate measures to investigate, prosecute and appropriately punish persons under their jurisdiction responsible for these abuses; additionally, Hamas authorities in the Gaza Strip should take immediate steps to end its campaign of abductions, deliberate and unlawful killings, torture, and unlawful detentions, and to punish those responsible. The creation of an independent, impartial and non-partisan commission of experts to investigate these abuses should receive attention as a matter of priority.**

(35) The Committee encourages the State party to ratify the Optional Protocol to the Convention.

(36) The Committee also encourages the State party to consider making the declarations under articles 21 and 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider inter-state and individual communications.

(37) The Committee encourages the State party to withdraw its declaration prohibiting article 20 inquiries.

(38) The Committee invites the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

(39) The State party is encouraged to disseminate widely the report and response to the list of Issues submitted by Israel to the Committee and the concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(40) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 15, 19, 20, 24 and 33 above.

(41) The State party is invited to submit its next periodic report, which will be considered as its fifth periodic report, by 15 May 2013.

50. New Zealand

(1) The Committee considered the fifth periodic report of New Zealand (CAT/C/NLZ/5) at its 875th and 876th meetings (CAT/C/SR.875 and 876) held on 1 and 4 May 2009, and adopted, at its 892nd meeting (CAT/C/SR.892), the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the fifth periodic report of New Zealand as well as the replies to the list of issues which provided additional information on the legislative, administrative, judicial and other measures taken by the State party to implement the Convention. The Committee also welcomes the constructive dialogue held with a competent and multisectoral delegation.

B. Positive aspects

(3) The Committee notes with appreciation:

(a) The ratification of the Optional Protocol to the Convention, on 14 March 2007, and the establishment of National Preventive Mechanisms coordinated by the New Zealand Human Rights Commission;

(b) The ratification of the Convention on the Rights of Persons with Disabilities on 25 September 2008;

(c) The accession to the Convention on the Reduction of Statelessness on 20 September 2006;

(d) The ratification of the Rome Statute of the International Criminal Court on 7 September 2000;

(e) The reviews of the legislation governing policing and corrections, which have resulted in improvements to the law in those areas, notably through the Policing Act 2008;

(f) The enactment of the Crimes Amendment Act 2007 which repeals the legal defence for the use of reasonable force "by way of correction" in section 59 of the Crimes Act 1961 and prohibits corporal punishment; and

(g) The abolition of the death penalty under the Abolition of the Death Penalty Act 1989.

C. Main issues of concern and recommendations

Incorporation of the Convention in national legislation

(4) While appreciating the steps the State party has taken to bring its domestic laws into compliance with its obligations under the Convention, the Committee is concerned that the Convention has not been fully incorporated into domestic law. The Committee notes with concern that the New Zealand Bill of Rights, while giving effect to a number of provisions of the Convention, including article 2, has no higher status than ordinary legislation in the domestic legal order, which may result in the enactment of laws that are incompatible with the Convention. The Committee further notes that judicial decisions make little reference to international human rights instruments, including the Convention (art. 2).

The State party should:

(a) Enact comprehensive legislation to incorporate into domestic law all the provisions of the Convention;

(b) Establish a mechanism to consistently ensure the compatibility of domestic law with the Convention; and

(c) Organize training programmes for the judiciary on the provisions of the Convention and the jurisprudence of the Committee.

Protection of minorities from torture and ill-treatment

(5) While taking note of the Maori Strategic Plan developed by the Department of Corrections, as well as the various initiatives undertaken by the Ministry of Justice to reduce Maori offending, the Committee is alarmed at the disproportionately high number of Maoris and Pacific Islands people incarcerated, in particular women who, according to information available to the Committee represent 60 per cent of the female prison population. The Committee is further concerned at the over-representation of Maoris at all levels of the criminal justice process, as well as at the insufficient safeguards in place to protect the rights of minorities from discrimination and marginalization, which put them at a higher risk of torture and ill-treatment (art. 2).

The Committee recalls that the protection of certain minorities or marginalized individuals or populations especially at risk of torture is a part of the obligation of the State party to prevent torture and ill-treatment. In this regard, the State party should take further measures including legal, administrative and judicial measures, to reduce the over-representation of Maoris and Pacific Islands people in prison, in particular women. The State party should also provide adequate training to the judiciary and law enforcement personnel that takes into account the obligation to protect minorities, and integrates a gender perspective. Also, the State party should undertake an in-depth research on the root causes of this phenomenon in order to put in place adequate safeguards to ensure full protection of minorities from discrimination and marginalization, which put them at a higher risk of torture and ill-treatment.

Non-refoulement and detention of asylum-seekers and undocumented migrants

(6) While noting that the Immigration Bill has incorporated the language of article 3 of the Convention, the Committee notes with concern that asylum-seekers and undocumented migrants continue to be detained in low security and correctional facilities. The Committee is further concerned at the continued issuance of security-risk certificates under the Immigration Act, which could lead to a breach of article 3 of the Convention, as the authorities may remove or deport a person deemed to constitute a threat to national security, without having to give detailed reasons or disclose classified information to the person concerned. The Committee is also concerned that the use of classified information by the State party for purposes of detention of asylum-seekers and undocumented migrants may result in a violation of their fundamental rights to due process, and may expose them to removal to countries where they might be at risk of torture (arts. 2 and 3).

The State party should consider putting an end to the practice of detaining asylum-seekers and undocumented migrants in low security and correctional facilities, and ensure that grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees. Where there is a risk that a person may be subject to torture if returned to his or her country of origin, the State party should undertake a thorough assessment of his or her claim, in full compliance with the provisions of article 3 of the Convention. The State party should also ensure, as indicated by the delegation, that the right of detained asylum-seekers and undocumented migrants to habeas corpus and to an effective appeal is guaranteed under the Immigration Bill.

Training of law enforcement personnel and immigration officials

(7) The Committee notes that training on human rights obligations is provided for police recruits, prison personnel and armed forces. It is however concerned at the insufficient training provided to immigration officials and personnel employed at immigration detention centres (art. 10).

The State party should ensure that education and training of all immigration officials and personnel, including medical personnel, employed at immigration detention centres, are conducted on a regular basis. The State party should also continue to ensure adequate training for personnel to detect signs of physical and psychological torture and ill-treatment of persons deprived of their liberty, and integrate the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment) in the training of all professionals involved in the investigation and documentation of torture. In addition, the State party should continue to assess the effectiveness and impact of all its training programmes on the prevention and protection from torture and ill-treatment.

Juvenile justice

(8) While welcoming the statement by the State Party whereby the Department of Corrections built four specialist youth units in male prisons in 2005, the Committee is concerned that juvenile offenders are not systematically separated from adult offenders, and in some cases, are still detained in police cells for several months. Furthermore, the Committee

is concerned at the low age of criminal responsibility, and at the fact that special protection under the Children, Young Persons and their Families Act of 1989 is not accorded to all persons under 18 in conflict with the law. The Committee is also concerned that the State party has maintained its reservation to article 37 (c) of the Committee on the Rights of the Child on the mixing of young and adult offenders (arts. 11 and 16).

The State party should:

(a) Ensure the full implementation of juvenile justice standards as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and consequently raise the age of criminal responsibility in compliance with accepted international standards;

(b) Ensure that the Bill amending the Children, Young Persons and their Families Act of 1989 is adopted in order to ensure that all persons under 18 in conflict with the law are accorded special protection;

(c) Ensure the availability of sufficient youth facilities so that all juveniles in conflict with the law are held separately from adults in pretrial detention, as well as after correction;

(d) Expedite the changes in legislation and administrative procedures necessary for the withdrawal of its reservation to article 37 (c) of the Convention of the Rights of the Child.

Conditions of detention

(9) The Committee notes with concern the insufficient number of prison facilities in light of the forecasted growth in prisoners numbers which may lead to inter-prisoners' violence. The Committee is also concerned at the inadequate provision of mental health care and legal services to mentally ill inmates in prisons. The Committee is concerned at the use by prison authorities of instruments of physical restraint that may cause unnecessary pain and humiliation (arts. 11 and 16).

In order to improve the arrangements for the custody of persons deprived of their liberty, the State party should undertake measures to reduce overcrowding, including consideration of noncustodial forms of detention in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), and in the case of children in conflict with the law ensure that detention is only used as a measure of last resort. It should also provide adequate mental health-care and legal services for all persons deprived of their liberty, particularly to inmates suffering from mental illnesses. The State party should keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that they are used only when necessary, and that their use is appropriately recorded.

Ensuring prosecution

(10) The Committee is concerned that the Crimes of Torture Act 1989 provides that no proceedings for the trial and punishment of a person charged with torture under the Act shall be instituted without the consent of the Attorney-General. The Committee is further concerned that if it were alleged that a member of the New Zealand Armed Forces had committed an offence under the Crimes of Torture Act, the commanding officer of that person might decide not to record a charge under that Act or refer the allegation to the appropriate civil authority for investigation if he considered that the allegation is not well-founded. Lastly, the Committee is also concerned that if it were alleged that a serious crime such as an offence under the Crimes of Torture Act had been committed, the decision to prosecute the alleged perpetrator, subject to the Attorney-General's consent, would be left to the police if found to be in the public interest (art. 12).

The State party should consider abandoning the system which gives the Attorney General discretion to decide whether or not to prosecute, even in cases in which there is reasonable ground to believe that an act of torture has been committed, as well as the discretion given to the police to prosecute alleged perpetrators on

the basis of public interest. In addition, the State party should ensure that where there is reasonable ground to believe that an act of torture has been committed, impartial and effective investigations should be launched immediately, even in cases where a commanding officer considers that the allegation is not well-founded.

Allegations of ill-treatment

(11) The Committee is concerned that allegations of cruel, inhuman or degrading treatment, inflicted by persons acting in an official capacity against children in State institutions, and against patients in psychiatric hospitals have not been investigated, perpetrators not prosecuted, and victims not accorded redress, including adequate compensation and rehabilitation (arts. 12, 14 and 16).

The State party should take appropriate measures to ensure that allegations of cruel, inhuman or degrading treatment in the "historic cases" are investigated promptly and impartially, perpetrators duly prosecuted, and the victims accorded redress, including adequate compensation and rehabilitation.

Independent police conduct authority

(12) In spite of the assurances given by the State party, the Committee remains concerned that the impartiality of the Independent Police Conduct Authority might be hampered by the inclusion of both current and former police officers regarding impartial and effective investigations into alleged acts of torture and ill-treatment by members of the police, in accordance with the provisions of the Convention (art. 12).

The State party should further strengthen the independence of the Independent Police Conduct Authority which should be staffed with independent experts drawn from outside the Police.

(13) The Committee is concerned that the Independent Police Conduct Authority may decide not to take action on complaints, including on grounds of torture or ill-treatment, in circumstances where the complainant has had knowledge of the matters under complaint for more than 12 months before the complaint was made (art. 12).

The State party should take all necessary legal and procedural measures to ensure that the crime of torture is not subject to the twelve months limitation, that allegations on grounds of torture are promptly and impartially investigated, alleged perpetrators duly prosecuted and punished if found guilty, and victims adequately compensated.

Withdrawal of reservation to article 14

(14) The Committee is concerned that the State party has maintained its reservation to article 14 of the Convention, which is incompatible with the letter and spirit of the Convention, as well as with its obligation to ensure the rights of victims of torture to a fair and adequate compensation including the means for as full rehabilitation as possible. The Committee is also concerned that the Prisoners and Victims Claims Act 2005 limits the award and payment of compensation to prisoners (art. 14).

The State party should consider withdrawing its reservation to article 14 of the Convention and ensure the provision of fair and adequate compensation through its civil jurisdiction to all victims of torture.

Use of statements obtained as a result of torture

(15) The Committee notes that the Evidence Act 2006 provides that if the defence raises in proceedings an issue as to whether a statement made by the defendant has been influenced by oppression, the Judge must exclude that statement unless the prosecution can prove beyond reasonable doubt that the statement was not influenced by "oppression". Furthermore, if evidence is obtained improperly, the admissibility of the statement is weighed against factors enumerated

in the Act. The Committee is concerned that the Act does not fully incorporate article 15 of the Convention whereby the State party should ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (art. 15).

> **The State party should bring the existing legislation concerning evidence to be adduced in judicial proceedings into line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.**

Use of taser weapons

(16) While taking note of the assurances by the State party whereby tasers are only to be used by trained and certified staff and only when the officer has an honest belief that the subject is capable of carrying out the threat posed and that the use of the taser is warranted, the Committee is deeply concerned about the introduction of these weapons in the New Zealand police. The Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in some cases it may even cause death. In addition, the Committee is concerned at reports whereby during the trial period tasers were predominantly used on Maoris and youths (arts. 2 and 16).

> **The State party should consider relinquishing the use of electric taser weapons, the impact of which on the physical and mental state of targeted persons would appear to violate articles 2 and 16 of the Convention.**

Violence against women

(17) While appreciating the various initiatives taken by the State party to eliminate violence against women, the Committee remains concerned about the continued prevalence of violence against women, particularly Maori, Pacific and minority women, and the low rates of prosecution and convictions for crimes of violence against women, as also stated by the Committee on the Elimination of Discrimination against Women (CEDAW/C/NZL/CO/6, para. 24) (art. 16).

> **The State party should ensure that all reasonable allegations of violence against women are promptly and impartially investigated, alleged perpetrators duly prosecuted, and punished if found guilty, and victims accorded adequate redress, including compensation and rehabilitation. The State party should also put in place additional protective measures for women, such as enabling the police to issue protective orders. The State party should continue to launch programmes of public awareness and sensitization to prevent and eradicate of violence against women.**

Data collection

(18) The Committee regrets the lack of data and statistical information, especially on alleged cases of torture, the type and number of complaints, prosecution and conviction of perpetrators, if found guilty, as well as on compensation and rehabilitation of victims (arts. 2, 12, 13, 14 and 16).

> **The State party should provide detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as on the related investigations, prosecutions and criminal and disciplinary sanctions.**

(19) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

(20) The State party is encouraged to disseminate widely the reports submitted by the State party to the Committee and the latter's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(21) The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations, as contained in paragraphs 9, 11, 14 and 16.

(22) The State party is invited to submit its next report, which will be considered as its sixth periodic report, by 15 May 2013.

51. Nicaragua

(1) The Committee considered the initial report of Nicaragua (CAT/C/NIC/1) at its 872nd and 874th meetings (see CAT/C/SR.872 and 874), held on 30 April and 1 May 2009, and adopted the following concluding observations at its 890th and 891st meetings, held on 13 May 2009 (CAT/C/SR.890 and 891).

A. Introduction

(2) The Committee welcomes the initial report of Nicaragua but regrets the delay in its submission. The Committee appreciates the constructive and fruitful dialogue that it held with a capable delegation from the State party and is grateful for its frank and detailed replies to the Committee's questions. The Committee also thanks the State party for the additional information sent by the delegation.

B. Positive aspects

(3) The Committee welcomes the State party's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 August 2008, which confirmed its will to combat and eradicate these practices.

(4) The Committee welcomes the ratification by the State party of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2005 and its ratification of the Convention on the Rights of Persons with Disabilities in December 2007.

(5) The Committee commends the State party for its establishment of the National Coalition against Trafficking in Persons in 2004 and its accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, also in 2004.

(6) The Committee appreciates the efforts made by the State party to improve the operation of the national prison system, especially the adoption on 11 September 2003 of Act No. 473 on the prison system and enforcement of sentences, which establishes rules on how sentences are to be served and custodial measures enforced in accordance with the principles of re-education and social reintegration.

(7) The Committee takes note with satisfaction of the adoption of the Code of Criminal Procedure, which is intended to improve the administration of justice.

(8) The Committee welcomes the Refugee Protection Act, which was adopted by the National Assembly on 4 June 2008 with all-party support.

(9) Furthermore, the Committee expresses its satisfaction at the creation of the post of Special Procurator for Prisons in 2006 for the purpose of monitoring the treatment given to persons held in detention centres.

C. Principal causes of concern and recommendations

Definition and criminalization of torture

(10) The Committee notes that the new Criminal Code, which entered into force on 9 July 2008, contains both a characterization and an explicit definition of torture in chapter II (Crimes against humanity), article 486. The Committee is, however, concerned that the definition of torture in the Criminal Code is not fully in line with article 1 of the Convention because it does not specifically refer to offences committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee is also concerned by the fact that the Military Criminal Code does not include the offence of torture but instead refers to "abuse of authority" and "causing injury", which could entail the application of standards that are more favourable to the accused (arts. 1 and 4).

> **The State party should adopt a definition of torture fully in line with article 1 of the Convention and ensure that this definition covers all the elements of torture. The State party should also amend the Military Criminal Code to include the offence of torture and bring it into line with the provisions of articles 1 and 4 of the Convention.**

Obligation to investigate and the right to complain

(11) The Committee notes with concern the complete absence of cases and sentences relating to the offences of torture and ill-treatment, which could be viewed as being akin to impunity. The Committee further expresses its concern at the fact that, despite the increase in the number of complaints by citizens, the outcome of 68 per cent of investigations of human rights violations by public officials has been negative and only 4 per cent of them have been referred to the Public Prosecutor's Office for the initiation of criminal proceedings, according to the additional information provided by the State party. The Committee considers that the almost total absence of criminal sanctions may constitute an obstacle to the implementation of the Convention (arts. 12 and 13).

> **The State party should adopt all necessary measures to ensure the immediate and impartial investigation of any complaints of torture or other cruel, inhuman or degrading treatment or punishment and to implement the necessary investigations and sanctions in order to prevent and combat impunity in the face of serious violations of the Convention. The Committee requests the State party to provide detailed statistical data, disaggregated by offence, ethnic origin and sex, in its next periodic report on complaints of acts of torture or ill-treatment allegedly committed by law enforcement officers and on the relevant investigations, the judgements reached and the criminal sentences or disciplinary sanctions imposed in each case. It also requests information on any redress, including rehabilitation or compensation, accorded to the victims.**

Independent inspection

(12) The Committee takes note of the information contained in paragraphs 83 and 86 of the State party's report, which indicates that both the Office of the Human Rights Procurator and Criminal Enforcement Judges are entitled to inspect detention centres. The Committee is, however, concerned by reports that the inspection of such centres is inadequate and that non-governmental organizations (NGOs) have difficulty in obtaining access (art. 2).

> **The Committee urges the State party to ensure that there is an effective system for inspecting detainees' detention conditions and treatment and, in particular, to extend the mandate of the Procurator for Prisons to include visits to migrant custody centres, military prisons and psychiatric hospitals and to facilitate access by NGOs to such places. The Committee requests that information be provided in the next report on the number of visits made, complaints received from detainees and the outcome thereof.**

Prevention of torture and other cruel, inhuman or degrading treatment or punishment and fundamental guarantees

(13) The Committee expresses its concern about the way in which the right to a defence is realized in practice, given that, according to paragraph 34 of the report, most detainees do not have the financial means to pay for a private lawyer and therefore use the services of an officially appointed defender, of whom there seem to be very few, at State expense (arts. 2 and 16).

> **The State party should adopt all necessary measures to guarantee any person deprived of liberty the right to be defended and, consequently, should increase the number and skill level of the country's public or officially appointed defenders and establish legal mechanisms for appeals against an inadequate defence. The Committee also urges the State party to give priority attention to the cases of detainees without families to care for them, the so-called *donados*.**

Administration of justice

(14) The Committee notes with concern that the information it has received reveals flaws in the State party's justice administration system. Some allegations suggest that public bodies within the judicial system lack impartiality and independence, essential qualities for ensuring the effective application of the principle of legality. In particular, there have been allegations of irregularities in the appointment of judges, use of the judicial system for partisan ends and instances of corruption among judges and police officers. Furthermore, the Committee is concerned at delays in the administration of justice, which in some cases have led to preventive detention extending beyond three months and delays in the timely review of the status of detainees (arts. 2 and 13).

> **The State party should take the necessary steps to remedy shortcomings in the administration of justice, in particular by allocating adequate resources and continuing its efforts to combat corruption. It should also take measures to guarantee the full independence of the judiciary in accordance with the relevant international standards and to remedy the shortage of judges. The State party should also establish that the practice of detention must conform to fair trial standards, ensure that time limits established for preventive detention are respected and act in a manner that allows justice to be administered within a reasonable period of time.**

Violence against women

(15) Although the Committee takes note of the various measures introduced by the State party to combat and eliminate violence against women, it remains concerned by the prevalence of all forms of violence against women and girls in Nicaragua and by the rise in the number of murders of women over the past few years as part of the wider problem of gender violence, particularly domestic and sexual violence. The Committee notes with concern that victims have insufficient access to justice, that information on the court sentences and punishments imposed for violence against women is lacking and that a means to assess the effectiveness of measures adopted to eradicate all forms of violence against women and girls is unavailable (art. 16).

> **The Committee urges the State party to devote priority attention to the adoption of comprehensive measures to combat and eliminate violence against women. The Committee calls upon the State party to ensure the full implementation of legislation on violence against women, to bring the perpetrators to justice and to impose due punishment. The Committee urges the State party to ensure that all victims of violence have access to immediate redress, protection, support and legal assistance. The Committee further recommends that ongoing training activities should be organized for police officers, especially those serving in the Special Police Units for Women, on the questions of gender violence and violence against children. In accordance with the latest concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW/C/NIC/CO/6) of February 2007, the Committee urges the State party to adopt and put into practice an integrated and multifaceted national strategy to eliminate violence against women and girls. This**

strategy should include legal, educational, financial and social components. The Committee also requests the State party to include detailed information in its next periodic report on the measures adopted and their results and, in particular, to provide data on the number and type of reported cases of violence against women, the sentences passed and the penalties imposed on perpetrators, and the assistance provided and compensation granted to victims.

(16) The Committee is deeply concerned by the general prohibition of abortion set forth in articles 143-145 of the Criminal Code, even in cases of rape, incest or apparently life-threatening pregnancies that in many cases are the direct result of crimes of gender violence. For the woman in question, this situation entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression. The Committee also notes with concern that women who, for the reasons mentioned above, seek an abortion face the risk of being penalized for doing so. The Committee is also concerned that the law authorizing therapeutic abortion in such cases was repealed by Parliament in 2006 and that, since the prohibition was adopted, there have been several documented cases in which the death of a pregnant woman has been associated with the lack of timely medical intervention to save her life, in clear violation of numerous ethical standards of the medical profession. The Committee also notes with concern that medical personnel may be investigated and punished by the State party for carrying out a therapeutic abortion under sections 148 and 149 of the Criminal Code (art. 16).

The Committee urges the State party to review its legislation on abortion, as recommended by the Human Rights Council, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights in their latest concluding observations, and to consider the possibility of providing for exceptions to the general prohibition of abortion for cases of therapeutic abortion and pregnancy resulting from rape or incest. The State party should, in accordance with the guidelines issued by the World Health Organization, guarantee immediate and unconditional treatment for persons seeking emergency medical care. The State party should also avoid penalizing medical professionals for the exercise of their professional responsibilities.

Protection of children against torture and cruel, inhuman or degrading treatment

(17) Although the Committee takes a favourable view of the National Plan of Action for the Prevention of Domestic and Sexual Violence, it is concerned by the fact that domestic violence, including sexual violence, and ill-treatment of children are an enduring and persistent phenomenon in the State party (art. 16).

The Committee urges the State party to intensify its efforts to deal with ill-treatment of children in the family and to strengthen mechanisms for combating all forms of violence, particularly in the family, at school and in social service, educational or correctional institutions or other centres.

Political opposition and human rights defenders

(18) The Committee notes with concern the information it has received on alleged cases of systematic harassment and death threats directed at human rights defenders, particularly female defenders of women's rights. The Committee also notes with concern the criminal investigations instituted against women defending reproductive rights, as well as the de facto constraints that limit the enjoyment of the right to freedom of association by organizations of human rights defenders (arts. 2, 12 and 16).

The Committee urges the State party to take the necessary measures to combat alleged cases of systematic harassment and death threats directed at human rights defenders in general and female defenders of women's rights in particular, to conduct impartial investigations and to duly punish the culprits.

(19) The Committee expresses concern at the information it has received regarding the violent suppression by some sectors of society, including civilian patrols allegedly supported by the Government, of collective demonstrations in which

the political opposition and representatives of NGOs participated. A failure to punish acts of this sort is an inducement to the repetition of such abuse and would appear to indicate the tacit approval of the authorities (arts. 2, 12 and 16).

> **The State party should adopt effective measures to combat and prevent acts of violence against members of the political opposition, their sympathizers and representatives of NGOs in connection with peaceful demonstrations and to provide proper protection for demonstrators. The State party should also ensure that immediate and impartial investigations are undertaken and culprits duly punished.**

Arbitrary detention

(20) The Committee shares the concern expressed in the report of the Working Group on Arbitrary Detention (A/HRC/4/40/Add.3) regarding the lack of effective, clear and systematic registers in police stations that would make it possible to establish with clarity and certainty when detainees have entered and left police stations, before which authorities they have been brought and where, and which of the competent authorities is currently responsible for them (arts. 2, 11 and 16).

> **The State party must arrange for substantial improvements in the system of registers kept in its police stations. These registers should make it possible to accurately determine, inter alia: the situation of all detainees, including the date and time of their arrest; the police officers responsible for taking them into custody; the date and time on which the Office of the Public Prosecutor, the detainees' families and their defending counsel were notified of their arrest; the date and time on which they were physically brought before a judge; and the date and time on which they left the police station and the authority into whose charge they were handed.**

Conditions of detention

(21) The Committee expresses its concern over the serious problem of overcrowding and other unsatisfactory detention conditions in custodial centres, which adversely affect the health of detainees. The Committee has also taken note of the especially disturbing situation in the Atlántico Norte and Atlántico Sur Autonomous Regions, particularly with regard to the substandard detention conditions prevailing in the Tipitapa and Bluefields prisons (art. 16).

> **The State party should immediately adopt measures to reduce overcrowding in prisons and to improve infrastructure and hygiene. It should provide the equipment, staff and budgetary resources needed to ensure that detention conditions throughout the country meet minimum international standards.**

(22) The Committee notes the information provided during its dialogue with the State party regarding detention conditions for women and minors in prison, according to which, because of overcrowding, there are no separate prisons for women and minors in some regions. Although the Committee appreciates the State party's efforts to find practical solutions for this problem, such as, for example, applying different time schedules and using different parts of the facilities, it recalls that, in the context of the prevention of torture and other cruel, inhuman or degrading treatment or punishment, women must be separated from men, and juvenile prisoners must be held in facilities completely apart from those for adults. The Committee stresses the importance of having an independent monitoring body equipped with adequate human and financial resources in order to guarantee full compliance with the Convention (art. 16).

> **The State party should ensure that women and men are held in separate facilities and, in particular, that minors are separated from adults. The State party should guarantee that training for prison staff who have to deal with women and minors incorporates gender considerations and the information they need in order to act with sensitivity. It also recommends that the State party strengthen independent procedures for prison inspection.**

Training

(23) The Committee observes that the duration and quality of training for prison staff and police officers remains insufficient to ensure appropriate multidisciplinary instruction in human rights for staff of the justice and police system, particularly officials coming into contact with children and juveniles and with women who are victims of domestic violence. The Committee is also concerned about the inadequacy of personnel training in regard to the prohibition of torture and inhuman or degrading treatment. The Committee also regrets the scarcity of information provided on the monitoring and evaluation of existing training programmes, as well as the lack of information on the results of the training given to all competent officials and on the usefulness of those programmes in reducing the number of cases of torture and ill-treatment (art. 10).

The State party should take the following action:

(a) Strengthen appropriate forms of multidisciplinary human rights training, including, in particular, comprehensive information on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in professional training programmes for police officers and prison staff;

(b) Provide all staff members with appropriate special training in the detection of signs of torture and ill-treatment. The Committee recommends that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should form an integral part of doctors' training;

(c) Devise and apply a method for assessing the effectiveness of training and educational programmes, as well as their impact in reducing the number of cases of torture, violence and ill-treatment;

(d) Devise and implement specific training on gender issues and ensure that the staff of juvenile centres receive training.

Administration of juvenile justice

(24) The Committee is concerned by the inadequacy of the human and financial resources devoted to ensuring the proper administration of juvenile justice, including the appropriate implementation of the Code on Children and Young Persons. The Committee is also concerned by the gaps that exist in the areas of defence and prosecution and in the definition and imposition of non-custodial measures or penalties for persons below the age of 18. The Committee also expresses concern over the lack of special correctional centres for persons below the age of 18 in conflict with the law and the poor detention conditions that currently exist, especially on police premises (art. 16).

The Committee recommends that the State party should bring its juvenile justice system fully into line with the Convention and other United Nations standards relating to juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines), as well as the latest recommendations of the Committee on the Rights of the Child (see CRC/C/15/Add.265). In this respect, the Committee recommends that the State party should, in particular:

(a) Allocate sufficient resources for appropriately implementing the Code on Children and Young Persons in all departments, especially through the establishment of juvenile courts throughout the country;

(b) Adopt all necessary measures to establish separate detention centres for persons below the age of 18;

(c) Improve detention conditions for persons below the age of 18, notably in police detention centres, in particular through compliance with international standards;

(d) Investigate, prosecute and punish, in all cases, ill-treatment committed by law enforcement officers, particularly prison guards, and establish an independent, accessible system for receiving and dealing with complaints from children which takes account of children's sensibilities;

(e) Ensure that children deprived of their liberty under the juvenile justice system maintain regular contact with their families and, in particular, inform parents where their children are being held;

(f) Offer prison staff training on the rights and special needs of children.

Redress, including the right to rehabilitation and compensation

(25) The Committee notes with concern the lack of information in the State party's report on the practical application of the right of victims of torture to redress, including their right to the most complete rehabilitation possible and to fair and adequate compensation by the State, and especially the lack of data on cases and on the judicial and administrative decisions adopted (art. 14).

The State party, in accordance with article 14 of the Convention, should ensure that redress, compensation and rehabilitation are guaranteed to all victims of torture, both in law and in practice. The Committee also requests the State party to include detailed information on the following matters in its next report:

(a) Applicable procedures for the rehabilitation and compensation of victims of torture and their families, along with an indication of whether those procedures are available only to nationals or also to other groups, such as refugees;

(b) A detailed description of the rehabilitation programmes that exist at the national level for victims of torture;

(c) Examples of actual cases of compensation and rehabilitation, together with the relevant judicial and administrative decisions adopted.

Data collection

(26) The Committee regrets the fact that, for certain areas covered by the Convention, the State party was unable to supply statistics or to disaggregate those supplied sufficiently (e.g., by age, gender and/or ethnic group). During the current dialogue, this was the case with respect to data on violence against women, including rape and sexual harassment, on investigations of possible complaints of torture or other cruel, inhuman or degrading treatment or punishment and on instances of compensation and rehabilitation, etc.

The State party should take such measures as may be necessary to ensure that the competent authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention. The Committee requests the State party to present detailed, disaggregated statistical data in its next periodic report on its follow-up to the recommendations set forth in paragraphs 10, 11, 14, 22 and 24 of these concluding observations.

(27) The Committee calls upon the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(28) The Committee requests the State party to include detailed information in its next periodic report on the steps it has taken to comply with the recommendations contained in these concluding observations. The Committee urges the State

party to take all appropriate steps to implement these recommendations, including their conveyance to the members of the Government and Parliament so that they may be considered and the necessary measures taken. The State party is also requested to give extensive coverage in the national languages of Peru to the reports submitted by Nicaragua to the Committee, as well as to the Committee's conclusions and recommendations, on official websites, in the official media and among NGOs. The State party is also urged to distribute such reports among national human rights NGOs before submitting them to the Committee.

(29) The Committee requests the State party to submit its common core document in accordance with the compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.5).

(30) The Committee requests the State party to provide information, within one year, on the measures taken in pursuance of the Committee's recommendations as set forth in paragraphs 10, 11, 14, 15 and 17 above.

(31) The Committee decided to request the State party to submit its second periodic report not later than 15 May 2013.

52. **Philippines**

(1) The Committee considered the second periodic report of the Philippines (CAT/C/PHL/2) at its 868th and 871st meetings (CAT/C/SR.868 and 871), held on 28 and 29 April 2009, and adopted, at its 887th and 888th meetings (CAT/C/SR.887 and 888), the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report of the Philippines, which, while generally following the Committee's guidelines for reporting, lacks statistical information and practical information on the implementation of the provisions of the Convention and relevant domestic legislation. The Committee regrets that the report was submitted 16 years late.

(3) The Committee expresses its appreciation for the extensive written responses to its list of issues (CAT/C/PHL/Q/2/Add.1), which provided important additional information. The Committee also appreciates the comprehensive and fruitful dialogue conducted with the high-level delegation and the additional oral information provided by representatives of the State party during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes that in the period since the consideration of the latest periodic report, the State party has ratified or acceded to the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities, in 2008;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2003;

(c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2003, and the Optional Protocol to the Convention on sale of children, child prostitution and child pornography, in 2002;

(d) The Optional Protocol to the International Covenant on Civil and Political Rights, in 1989, and the Second Optional Protocol to the Covenant, in 2007;

(e) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in 1995;

(f) The Convention on the Rights of the Child, in 1990;

(g) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2002, supplementing the United Nations Convention against Transnational Organized Crime.

(5) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The adoption, in 2006, of the Juvenile Justice Welfare Act (RA 9344) as well as the creation of the Juvenile Justice Welfare Council to ensure the effective implementation of the Act;

(b) The enactment, in 2006, of Republic Act 9346, abolishing the death penalty;

(c) The adoption, in 2004, of the Anti-Violence against Women and Their Children Act (RA 9262) which defines violence against women and their children, providing for protective measures for victims and penalties for the perpetrators of the violence;

(d) The adoption, in 2003, of the Anti-Trafficking in Persons Act (RA 9208);

(e) The adoption, in 1997, of the Indigenous People's Rights Act (RA 8371);

(f) The issuance, in December 2008, of Administrative Order 249 which directed concerned Executive branches of government to institute policies, programs and projects that would further enhance human rights in the Philippines; and

(g) The promulgation, in October 2007, by the Supreme Court of the Recourse to the Rule of Writ of Amparo and the Rule of the Writ of Habeas Data.

(6) The Committee notes with appreciation that the State party has initiated a number of practical policies, programmes and projects, including the "Access to Justice for the Poor" Project (AJPP), the Mobile Court or "Justice on Wheels" programme of the Supreme Court and the recent directive by the National Police Commission to activate human rights desks in all police stations nationwide.

C. Principal subjects of concern and recommendations

Torture and ill-treatment and insufficient safeguards during police detention

(7) Notwithstanding the assurances provided by the State party to the Committee that "torture or ill-treatment on suspects or detainees is not tolerated or condoned by the Philippine National Police (PNP) and that erring PNP personnel are dealt with accordingly", the Committee is deeply concerned about the numerous, ongoing, credible and consistent allegations, corroborated by a number of Filipino and international sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, despite the enactment of the Law on the Rights of Persons Arrested, Detained or under Custodial Investigation (RA 7438), there are insufficient legal safeguards for detainees in practice, including:

(a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police custody;

(b) Absence of systematic registration of all detainees, including minors, and failure to keep records of all periods of pretrial detention; and

(c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members (arts. 2, 10 and 11).

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a policy of total elimination in respect of any ill-treatment or torture by State officials.

As part of this, the State party should implement effective measures promptly to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation, including minors, are included in a central register which functions effectively.

The State party should also reinforce its training programmes for all law enforcement personnel, including all members of the judiciary and prosecutors, on the absolute prohibition of torture, as the State party is obliged to carry out such training under the Convention. Moreover, it should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing cases of torture.

Extrajudicial killings and enforced disappearances

(8) The Committee notes the efforts undertaken by the State party in respect of extrajudicial killings, including the establishment, in 2006, of the independent Commission to Address Media and Activist Killings (the Melo Commission) and various coordination and investigative task forces, including the Task Force USIG. However, the Committee expresses its grave concern at the number of such killings that have occurred in the past years and at reports that, although the total number of killings has declined significantly, such killings as well as enforced disappearances continue (arts. 12 and 16).

The State party should take effective steps to investigate promptly, effectively and impartially all allegations of involvement of members of law enforcement agencies in extrajudicial killings and enforced disappearances. The State party should inform the Committee in its next periodic report of efforts and measures undertaken to address extrajudicial killings and other human rights abuses, including those by non-State actors. In this respect, the State party should implement the recommendations contained in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/8/3/Add.2), following his visit to the Philippines in February 2007.

Impunity

(9) The Committee is deeply concerned that credible allegations of torture and/or ill-treatment committed by law enforcement and military services personnel are seldom investigated and prosecuted and that perpetrators are either rarely convicted or sentenced to lenient penalties that are not in accordance with the grave nature of their crimes. The Committee reiterates its grave concerns over the climate of impunity for perpetrators of acts of torture, including military, police and other State officials, particularly those holding senior positions that are alleged to have planned, commanded or perpetrated acts of torture (arts. 2, 4 and 12).

The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention.

Furthermore, State officials should publicly announce a policy of total elimination in respect of acts of torture and other cruel, inhuman and degrading treatment or punishment and support prosecution of the perpetrators of such acts.

Definition of torture

(10) The Committee notes the State party's statement to the Committee that the Revised Penal Code guarantees that all acts of torture are classified as criminal offences with corresponding penalties under Philippine laws as well as the explanation provided by the delegation in this respect. However, the Committee is concerned that the State party has not incorporated into national law the crime of torture as defined in article 1 of the Convention. While noting information provided as to the recent passage of the Anti-Torture Bill in the House of Representatives, the Committee is concerned at the delay in legislating on this matter (arts. 1 and 4).

> **The State party should incorporate into domestic law the crime of torture and adopt a definition of torture that covers all of the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself. The Committee therefore urges the State party to enact the Anti-Torture Bill as soon as possible.**

Human rights defenders and other individuals at risk

(11) The Committee notes with concern the numerous documented reports of harassment and violence against human rights defenders that hamper the capacity of civil society monitoring groups to function effectively. The Committee is also concerned at reports that others are also commonly victims of serious human rights violations, including torture, ill-treatment, killings, disappearances and harassment. Among those so affected are indigenous rights defenders, such as Lumads of Mindanao and Igorots of the Cordillera, trade union and peasant activists, journalists and reporters, medical personnel, and religious leaders (arts. 2, 12 and 16).

> **The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts.**
>
> **Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, including by prosecuting and punishing all acts of violence and abuses against such individuals and ensuring implementation of positive measures of prevention and protection.**

De facto practice of detention of suspects

(12) The Committee is deeply concerned about the de facto practice of detention of suspects by the PNP and the Armed Forces of the Philippines (AFP) in detention centres, safe houses and military camps. Although authorities are required to file charges within 12 to 36 hours of arrests made without warrants, depending on the seriousness of the crime, lengthy pretrial detention remains a problem, due to the slow judicial process. The use of arrests without warrants is reportedly extensive, and criminal suspects are at risk of torture and ill-treatment. Arrests without a warrant and the lack of judicial oversight on the legality of detention can facilitate torture and ill-treatment (arts. 2 and 11).

> **The State party should take all necessary measures to address the de facto practice of detention of suspects by the PNP and the AFP, especially lengthy pretrial detention and arrests without warrants. In this respect, the State party should take all appropriate measures to further reduce the duration of detention in custody and detention before charges are brought, and develop and implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences.**

Terrorism legislation

(13) The Committee recognizes the difficult situation arising from the internal armed conflict in the Philippines and that the State party is faced with a long-lasting insurgency. However, the Committee is concerned about the 2007 Human Security Act (RA 9372) which has been criticized for its overly broad definition of "terrorist crimes", the strict application of a penalty of 40 years of imprisonment, the competence of various bodies authorized to review the detention of an individual, and the restrictions on movement. The Committee is also concerned that the Act allows for suspects to be detained without warrant or charge for up to 72 hours (arts. 2 and 16).

The State party should review the 2007 Human Security Act and amend it, as necessary, to bring it into conformity with international human rights standards.

Non-refoulement

(14) The Committee takes note of the statement by the delegation that the State party has neither engaged nor participated in any form of "extraordinary renditions" or refoulement and that there has been no instance where it has received a request indicating that the person to be extradited would be in danger of being subjected to torture. Notwithstanding the proscription included under Section 57 "Ban on Extraordinary Rendition" of the 2007 Human Security Act, the Committee is concerned that the Act appears to permit persons apprehended in the Philippines to be rendered to countries that routinely commit torture, as long as the receiving State provides assurances of fair treatment (art. 3).

The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.

In this respect, the State party should ensure that the relevant judicial and administrative authorities carry out a thorough and exhaustive assessment, prior to making any expulsion order, in all cases of foreign nationals who have entered or stayed in the Philippines unlawfully, including individuals who may constitute a security threat, in order to ensure that the persons concerned would not be subjected to torture, inhuman or degrading treatment or punishment in the country to which each of them would be returned.

Prompt, effective and impartial investigations

(15) While noting that many agencies have a mandate to investigate complaints of torture and ill-treatment, the Committee is concerned at the high number of complaints of torture and ill-treatment by law enforcement officials, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. Additionally, these bodies lack independence to review individual complaints about police and military misconduct (arts. 12 and 16).

The State party should strengthen its measures to ensure prompt, thorough, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation, or continue any reported impermissible actions in breach of the Convention.

The State party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to ensure that the law enforcement personnel who are responsible for violations prohibited by the Convention are held accountable.

Effectiveness and independence of the Commission on Human Rights

(16) The Committee is concerned that, in a number of instances, the Commission on Human Rights of the Philippines (CHRP) has been denied entry into jails and detention facilities mostly under the jurisdiction of the military. The Committee is also concerned that Section 19 of the 2007 Human Security Act grants the CHRP authority to prolong detention of suspects. In the view of the Committee, these measures compromise the capacity of the CHRP to monitor the State party's human rights compliance (arts. 2, 11 and 12).

The State party should take the necessary steps to strengthen the mandate, including access to detention facilities, and independence of the CHRP, including through adoption of the proposed CHRP Charter as well as allocation of sufficient resources for its effective implementation. The visitation mandate of the CHRP should include unhampered and unrestrained access to all detention facilities, including those under the jurisdiction of the military.

Ill-treatment in detention centres

(17) While welcoming the measures undertaken by the State party through the Bureau of Jail Management and Penology (BJMP) to improve conditions of detention, including the release of a total of 3,677 inmates in 2008 or nine per cent of the prison population, the Committee is concerned that there is severe overcrowding, sub-standard facilities and lack of basic facilities (arts. 11 and 16).

The Committee recommends that the State party:

(a) Continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the increase of budgetary allocations to develop and renovate the infrastructure of prisons and other detention facilities;

(b) Adopt the BJMP Modernization Act of 2007 (House Bill No. 00665), filed on 30 July 2007 that seeks to upgrade the physical facilities of jails and detention centres;

(c) Take effective measures to further improve living conditions in the detention facilities.

Sexual violence in detention

(18) While noting the enactment of a number of relevant laws and that the State party has established a total of 31 female dormitories, the Committee expresses serious concern at numerous allegations of cases of rape, sexual abuse and torture committed against women detainees by the police, military and prison officials/personnel. In this respect, the Committee is concerned about reports that in many provincial jails, officials continue to place women together with male inmates, and that male corrections officers continue to guard female inmates in violation of agency regulations (arts. 11 and 16).

The State party should take effective measures to prevent sexual violence in detention, including by reviewing current policies and procedures for the custody and treatment of detainees, ensuring separation of juvenile detainees from adults, and of female detainees from males, enforcing regulations calling for female inmates to be guarded by officers of the same gender, and monitoring and documenting incidents of sexual violence in detention, **and provide the Committee with data thereon, disaggregated by relevant indicators.**

The State party should also take effective measures to ensure that detainees who allegedly are sexually victimized are able to report the abuse without being subjected to punitive measures by staff, protect detainees who report sexual abuse from retaliation by the perpetrator(s), promptly, effectively and impartially investigate and prosecute all instances of sexual abuse in custody and provide access to

confidential medical and mental health care for victims of sexual abuse in detention, as well as access to redress, including compensation and rehabilitation, as appropriate.

Furthermore, the Committee calls upon the State party to consider enacting the draft Prison Rape Elimination Act of 2008.

Children in detention

(19) While appreciating the State party's clarification of measures undertaken to reduce the number of children in detention, including the enactment of the 2006 Juvenile Justice Welfare Act (RA 9344), a variety of social welfare services provided for children in conflict with the law and the release of 565 minors in 2008, the Committee is concerned that a significant number of children remain in detention and at reports of a de facto practice of not separating children from adults in detention facilities throughout the country, despite the requirement included in the Juvenile Justice Welfare Act demanding such separation (arts. 11 and 16).

The State party should further reduce the number of children in detention and ensure that persons below 18 years of age are not detained with adults; that alternative measures to deprivation of liberty, such as probation, community service or suspended sentences are available; that professionals in the area of recovery and social reintegration of children are properly trained; and that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriate conditions.

Training

(20) The Committee takes note of the detailed information provided by the State party on the inclusion of human rights components in the training programmes and sessions for all military and law enforcement units of the Government, in close cooperation with the CHRP. However, the Committee is concerned at the lack of information on monitoring and evaluation of the impact of these training programmes in reducing incidents of torture and ill-treatment (art. 10).

The State party should further develop and strengthen educational programmes to ensure that all officials, including law enforcement officials and prison staff are fully aware of the provisions of the Convention, that reported breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant personnel should receive specific training on how to identify signs of torture and ill-treatment, and such training should also include the use of the Istanbul Protocol which should be provided to physicians and translated into the Filipino and other languages, as appropriate, and utilized effectively. Furthermore, the State party should assess the effectiveness and impact of such training/educational programmes.

Witness protection

(21) While noting the information provided by the State party, including the draft legislation to strengthen the Witness Protection Programme (WPP) and recent activities of the WPP, the Committee expresses its concern at reports that the Programme is not sufficiently implemented, that intimidation of witnesses deters them from coming forward to use the program and that detainees who suffer ill-treatment are often coerced by the police to sign waivers or statements to the contrary. The Committee is concerned at the statement by the delegation that "except in a few highly urbanized cities conditions in Philippine courts hardly inspire confidence in the witnesses that they are well protected if they participate in the trial" (art. 13).

The State party should, as a matter of priority, take the necessary measures to strengthen the WPP under the Witness Protection, Security and Benefit Act (RA 6981) to guarantee the safety of witnesses to torture incidents and other human rights violations. The State party must give high priority to the funding and effectiveness of this programme.

Redress, including compensation and rehabilitation

(22) The Committee welcomes the creation of a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes. Nonetheless, the information submitted to the Committee regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases is insufficient, and the Committee is concerned at reports of inadequate compensation and arbitrary refusals and delays concerning compensation. The Committee regrets the lack of information on treatment and social rehabilitation services and other forms of assistance, including medical and psycho-social rehabilitation, provided to these victims. However, it takes note of the information provided in the replies to the list of issues that the formulation of a Rehabilitation Program within one year from the entry into force of the proposed Anti-Torture Bill is stipulated in the Bill (art. 14).

> **The State party should strengthen its efforts to provide victims of torture and ill-treatment with fair and adequate compensation, redress and as full rehabilitation as possible. Furthermore, the State party should provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.**

Coerced confessions

(23) While noting that Section (d, e) of Republic Act 7438 and Section 25 of the 2007 Human Security Act prohibit the admissibility of evidence obtained through torture or duress, the Committee is concerned at reports that such prohibition is not respected in all cases and that the burden of proof as to whether the statement has been made as a result of torture rests with the suspect, not the prosecution (art. 15).

> **The State party should take the necessary steps to ensure inadmissibility in court of confessions obtained under torture or duress in all cases in line with the provisions of article 15 of the Convention.**

Children involved in armed conflict

(24) The Committee appreciates the various legislative and other measures adopted by the State party, including the 2001 Comprehensive Program on Children Involved in Armed Conflict, the creation, in 2004, of an Inter-Agency Committee on Children Involved in Armed Conflict, the activities of the National Commission on Indigenous Peoples in this respect as well as the visit of the Special Representative of the Secretary-General for children and armed conflict in December 2008. Nonetheless, the Committee expresses serious concern about allegations of continued abduction and military recruitment of child soldiers by the non-State armed groups, including the Moro Islamic Liberation Front, the New People's Army and the Abu Sayyaf (art. 16).

> **The State party should take the necessary steps, in a comprehensive manner and to the extent possible, to prevent the abduction and military recruitment of children by armed groups that are distinct from the armed forces of the State. The State party should also take the necessary measures to facilitate the reintegration of former child soldiers into society.**

Domestic violence

(25) The Committee takes note of various measures taken by the State party, including the enactment, in 2004, of the Anti-Violence Against Women and their Children Act (RA 9262) and the establishment of a significant number of Women and Children Desks in police stations all over the country and the Women and Children Protection Centre of the PNP. However, the Committee expresses its concern about the prevalence of violence against women and children, including domestic violence. It is further concerned about the lack of State-wide statistics on domestic violence and that sufficient statistical data on complaints, prosecutions and sentences in matters of domestic violence were not provided (arts. 1, 2, 12 and 16).

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence. The Committee calls upon the State party to allocate sufficient financial resources to ensure the effective implementation of the Anti-Violence Against Women and their Children Act. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with the victims. In addition, the Committee recommends that the State party strengthen its efforts in respect of research and data collection on the extent of domestic violence.

Furthermore, the State party is encouraged to promptly enact the Magna Carta of Women (House Bill 4273) which is the national translation of the Convention on the Elimination of All Forms of Discrimination against Women.

Trafficking

(26) While noting the significant efforts of the State party, including the recent convictions of traffickers, the adoption, in 2003, of the Anti-Trafficking in Persons Act (RA 9208) with the creation of the Inter-Agency Council Against Trafficking (IACAT) to coordinate and monitor its implementation as well as the "We are not for sale: Victims of Human Trafficking Speak Up Project", the Committee is concerned that the Philippines continues to be a source, transit and destination country for cross-border trafficking of women and children for sexual exploitation and forced labour. The Committee regrets the very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking with many of those cases being dismissed at preliminary stages (arts. 2, 12 and 16).

The State party should take all necessary measures to implement the current laws combating trafficking and provide protection for victims and their access to medical, social rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigation into all allegations of trafficking and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes.

Data collection

(27) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and military personnel, as well as on extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence. The Committee takes note of the statement in the report that "a statistical presentation of action done on complaints related to acts of torture is hampered by the absence of a law specifically defining torture" (arts. 12 and 13).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence as well as on redress, including compensation and rehabilitation provided to the victims.

(28) While welcoming the various efforts by the State party towards its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol), the Committee encourages the State party to consider ratifying the Optional Protocol as soon as possible.

(29) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(30) While noting that the State party has ratified all the core United Nations human rights treaties currently in force, the Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

(31) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

(32) The State party is encouraged to disseminate widely the reports submitted by the Philippines to the Committee and the concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(33) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 15, 16, 18 and 19 above.

(34) The State party is invited to submit its next periodic report, which will be considered as its third periodic report, by 15 May 2013.

IV. FOLLOW-UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow-up recommendations. Of the 67 States parties that were due to have submitted their follow-up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow-up information that had fallen due. The Rapporteur sends reminders requesting the outstanding information to each of the States whose follow-up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status

of the follow-up to concluding observations may be found in the web pages of the Committee (http://www2.ohchr.org/english/bodies/cat/ sessions.htm).

59. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture …" (art. 2, para. 1) and the undertaking "to prevent … other acts of cruel, inhuman and degrading treatment or punishment …" (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

62. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website (http://www2.ohchr.org/english/bodies/cat/sessions.htm).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

64. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies. The following list of items is illustrative, not comprehensive:

(a) The need for greater precision on the means by which police and other personnel instruct on and guarantee detainees their right to obtain prompt access to an independent doctor, lawyer and family member, and the treatment of detainees during pretrial detention;

(b) The importance of specific case examples regarding such access, and implementation of other follow-up recommendations;

(c) The need for separate, independent and impartial bodies to examine complaints of abuses of the Convention, because the Committee has repeatedly noted that victims of torture and ill-treatment are unlikely to turn to the very authorities of the system allegedly responsible for such acts; and the importance of the protection of persons employed in such bodies, and precise information about plans to reform and empower human rights institutions at the national levels to address torture-related issues;

(d) The value of providing precise information such as lists of prisoners which are good examples of transparency, but which often reveal a need for more rigorous fact-finding and monitoring of the treatment of persons facing possible infringement of the Convention;

(e) Numerous ongoing challenges in gathering, aggregating, and analysing police and administration of justice statistics in ways that ensure adequate information as to personnel, agencies, or specific facilities responsible for alleged abuses;

(f) The protective value of prompt and impartial investigations into allegations of abuse, and in particular information about effective parliamentary or national human rights commissions or ombudspersons as investigators, especially for instances of unannounced inspections; the utility of permitting non-governmental organizations to conduct prison visits; and the utility of precautionary measures to protect investigators and official visitors from harassment or violence impeding their work;

(g) The need for information about specific professional police training programmes, with clear-cut instructions as to the prohibition against torture and practice in identifying the sequelae of torture; and for information about the conduct of medical examinations, including autopsies, by trained medical staff, especially whether they are informed of the need to document signs of torture including sexual violence and to ensure the preservation of evidence of torture;

(h) The need for evaluations and continuing assessments of whether a risk of torture or other ill-treatment results from official counter-terrorism measures;

(i) The lacunae in statistics and other information regarding offences, charges and convictions, including any specific disciplinary sanctions against officers and other relevant personnel, particularly on newly examined issues under the Convention, including data on crimes involving torture or ill-treatment said to be motivated by ethnic or racial factors, incidents of sexual violence, complaints about abuses within the military, the use of "diplomatic assurances" for persons being returned to another country to face criminal charges (including information on the matter of diplomatic assurances when they exist, such as the number of cases of returns, the number of cases in which assurances are sought, the minimum requirements for such assurances and any post-return monitoring review mechanisms), etc.;

(j) Concerns about the absence or inadequacy of information on the measures, available or actually used to address complaints of police misconduct, including the creation of oversight commissions or other measures;

(k) The lacunae in statistics concerning fair and adequate compensation and rehabilitation measures for victims of torture, including victims of sexual violence.

65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow-up.

Follow-up procedure to conclusions and recommendations from May 2003 to May 2009

Thirtieth session (May 2003)

State party	Information due in	Information received	Action taken
Azerbaijan	May 2004	7 July 2004 CAT/C/CR/30/RESP/1	Request for further clarification
Cambodia	August 2003	Not received	Reminder
Republic of Moldova	August 2003	Not received	Reminder

Thirty-first session (November 2003)

State party	Information due in	Information received	Action taken
Cameroon	November 2004	Not received	Reminder
Colombia	November 2004	24 March 2006 CAT/C/COL/CO/3/Add.1	Request for further clarification
		17 October 2007 CAT/C/COL/CO/3/Add.2	Response under review
Latvia	November 2004	3 November 2004 CAT/C/CR/31/RESP/1	Request for further clarification
		14 May 2007 CAT/C/LVA/CO/1/Add.2	Response under review
Lithuania	November 2004	7 December 2004 CAT/C/CR/31/RESP/1	Request for further clarification

State party	Information due in	Information received	Action taken
		25 October 2006 CAT/C/LTU/CO/1/Add.2	Response under review
Morocco	November 2004	22 November 2004 CAT/C/CR/31/2/Add.1	Request for further clarification
		31 July 2006 CAT/C/MAR/CO/3/Add.2	
		27 October 2006 CAT/C/MAR/CO/3/Add.3	Response under review
Yemen	November 2004	22 August 2005 CAT/C/CR/31/4/Add.1	Request for further clarification

Thirty-second session (May 2004)

State party	Information due in	Information received	Action taken
Bulgaria	May 2005	Not received	Reminder
Chile	May 2005	22 January 2007 CAT/C/38/CRP.4	Request for further clarification
Croatia	May 2005	12 July 2006 CAT/C/HRV/CO/3/Add.1	Request for further clarification
Czech Republic	May 2005	25 April 2005 CAT/C/CZE/CO/3/Add.1	Request for further clarification
		14 January 2008 CAT/C/CZE/CO/3/Add.2	Response under review
Germany	May 2005	4 August 2005 CAT/C/CR/32/7/RESP/1	Request for further clarification
		27 September 2008 CAT/C/CR/32/7/RESP/2	Response under review
Monaco	May 2005	30 March 2006 CAT/C/MCO/CO/4/Add.1	Request for further clarification
New Zealand	May 2005	9 June 2005 CAT/C/CR/32/4/RESP/1	
		19 December 2006 CAT/C/NZL/CO/3/Add.2	Request for further clarification

Thirty-third session (November 2004)

State party	Information due in	Information received	Action taken
Argentina	November 2005	2 February 2006 CAT/C/ARG/CO/4/Add.1	Request for further clarification

State party	Information due in	Information received	Action taken
Greece	November 2005	14 March 2006 CAT/C/GRC/CO/4/Add.1 8 October 2008 CAT/C/GRC/CO/4/Add.2	Request for clarification
United Kingdom of Great Britain and Northern Ireland	November 2005	14 March 2006 CAT/C/GBR/CO/4/Add.1	Request for further clarification

Thirty-fourth session (May 2005)

State party	Information due in	Information received	Action taken
Albania	May 2006	15 August 2006 CAT/C/ALB/CO/1/Add.1	Request for further clarification
Bahrain	May 2006	21 November 2006 CAT/C/BHR/CO/1/Add.1	Request for further clarification
Canada	May 2006	2 June 2006 CAT/C/CAN/CO/4/Add.1	Request for further clarification
Finland	May 2006	19 May 2006 CAT/C/FIN/CO/4/Add.1	Request for further clarification
Switzerland	May 2006	16 June 2005 CAT/C/CR/34/CHE/Add.1 15 May 2007 CAT/C/CHE/CO/4/Add.2	Response under review
Uganda	May 2006	Not received	Reminder

Thirty-fifth session (November 2005)

State party	Information due in	Information received	Action taken
Austria	November 2006	24 November 2006 CAT/C/AUT/CO/3/Add.1	Request for further clarification
Bosnia and Herzegovina	November 2006	1 February 2006 CAT/C/BIH/CO/1/Add.1 6 May 2007 CAT/C/BIH/CO/1/Add.2	Request for further clarification
Democratic Republic of the Congo	November 2006	Not received	Reminder
Ecuador	November 2006	20 November 2006 CAT/C/ECU/CO/3/Add.1	Request for further clarification
France	November 2006	13 February 2007	Response under review

State party	Information due in	Information received	Action taken
		CAT/C/FRA/CO/3/Add.1	
Nepal	November 2006	1 June 2007 CAT/C/NPL/CO/2/Add.1	Request for further clarification
Sri Lanka	November 2006	22 November 2006 CAT/C/LKA/CO/2/Add.1	Request for further clarification

Thirty-sixth session (May 2006)

State party	Information due in	Information received	Action taken
Georgia	May 2007	31 May 2007 CAT/C/GEO/CO/3/Add.1	Response under review
Guatemala	May 2007	15 November 2007 CAT/C/GTM/CO/4/Add.1	Response under review
Republic of Korea	May 2007	27 June 2007 CAT/C/KOR/CO/2/Add.1	Request for further clarification
Peru	May 2007	Not received	Reminder
Qatar	May 2007	12 December 2006 CAT/C/QAT/CO/1/Add.1	Response under review
Togo	May 2007	Not received	Reminder
United States of America	May 2007	25 July 2007 CAT/C/USA/CO/2/Add.1	Request for further clarification

Thirty-seventh session (November 2006)

State party	Information due in	Information received	Action taken
Hungary	November 2007	15 November 2007 CAT/C/HUN/CO/4/Add.1	Request for further clarification
Russian Federation	November 2007	23 August 2007 CAT/C/RUS/CO/4/Add.1	Request for further clarification
Mexico	November 2007	14 August 2008 CAT/C/MEX/CO/4/Add.1	Response under review
Guyana	November 2007	Not received	Reminder
Burundi	November 2007	Not received	Reminder
South Africa	November 2007	Not received	Reminder
Tajikistan	November 2007	Not received	Reminder

Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
Denmark	May 2008	18 July 2008 CAT/C/DNK/CO/5/Add.1	Response under review
Italy	May 2008	9 May 2008 CAT/C/ITA/CO/4/Add.1	Response under review
Japan	May 2008	29 May 2008 CAT/C/JPN/CO/1/Add.1	Response under review
Luxembourg	May 2008	Not received	Reminder
The Netherlands	May 2008	17 June 2008 CAT/C/NET/CO/4/Add.1	Response under review
Poland	May 2008	12 June 2008 CAT/C/POL/CO/4/Add.1	Response under review
Ukraine	May 2008	21 April 2009 CAT/UKR/CO/5/Add.1	Response under review

Thirty-ninth session (November 2007)

State party	Information due in	Information received	Action taken
Benin	November 2008	Not received	Reminder
Estonia	November 2008	19 January 2009 CAT/C/EST/CO/4/Add.1	Response under review
Latvia	November 2008	Not received	Reminder
Norway	November 2008	Not received	Reminder
Portugal	November 2008	23 November 2007 CAT/C/PRT/CO/4/Add.1	Response under review
Uzbekistan	November 2008	19 February 2008 CAT/C/UZB/CO/3/Add.1	Response under review

Fortieth session (May 2008)

State party	Information due in	Information received	Action taken
Algeria	May 2009	29 May 2008 CAT/C/DZA/CO/3/Add.1	Response under review
Australia	May 2009	Not received	
Costa Rica	May 2009	Not received	
Iceland	May 2009	Not received	
Indonesia	May 2009	Not received	

State party	Information due in	Information received	Action taken
The former Yugoslav Republic of Macedonia	May 2009	Not received	
Sweden	May 2009	Not received	
Zambia	May 2009	Not received	

Forty-first session (November 2008)

State party	Information due in	Information received	Action taken
Belgium	November 2009	-	
China Hong Kong Macao	November 2009	10 December 2008 CAT/C/CHN/CO/4/Add.1	
Kazakhstan	November 2009	-	
Kenya	November 2009	-	
Lithuania	November 2009	-	
Montenegro	November 2009	6 April 2009 CAT/C/MNE/CO/1/Add.1	Response under review
Serbia	November 2009	-	

Forty-second session (May 2009)

State party	Information due in	Information received	Action taken
Chad	May 2010	-	
Chile	May 2010	-	
Honduras	May 2010	-	
Israel	May 2010	-	
New Zealand	May 2010	-	
Nicaragua	May 2010	-	
Philippines	May 2010	-	

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

66. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

67. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

68. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

69. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

70. In the framework of its follow-up activities, the Rapporteurs on article 20, continued to carry out activities aimed at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

A. Introduction

71. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Sixty-four out of 146 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

72. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents relating to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 107 and 109 of the Committee's rules of procedure set out the modalities of the complaints procedure.

73. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public, without disclosing the identity of the complainant, but identifying the State party concerned.

74. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

75. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, where they allege a violation of article 3 of the Convention. Pursuant to rule 108, paragraph 1, at any time after the receipt of a complaint, the Committee, through its Rapporteur for new complaints and interim measures, may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures.

76. The Rapporteur for new complaints and interim measures has developed the working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard

formulation is added to the request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. Some States parties have adopted the practice of systematically requesting the Rapporteur to withdraw his request for interim measures of protection. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him when he took his initial decision on interim measures.

77. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur for new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 108, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies may be dispensed with if the only remedies available to the complainant are without suspensive effect, i.e. remedies that, for instance, do not automatically stay the execution of an expulsion order to a State where the complainant might be subjected to torture, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a substantial likelihood of success on the merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

78. The Committee is aware that a number of States parties have expressed concern that interim measures of protection have been requested in too large a number of cases alleging violations of article 3 of the Convention, especially where the complainant's deportation is alleged to be imminent, and that there are insufficient factual elements to warrant a request for interim measures. The Committee takes such expressions of concern seriously and is prepared to discuss them with the States parties concerned. In this regard it wishes to point out that in many cases, requests for interim measures are lifted by the Special Rapporteur, on the basis of pertinent State party information received that obviates the need for interim measures.

C. Progress of work

79. At the time of adoption of the present report the Committee had registered, since 1989, 384 complaints concerning 29 States parties. Of them, 95 complaints had been discontinued and 59 had been declared inadmissible. The Committee had adopted final decisions on the merits on 158 complaints and found violations of the Convention in 48 of them. Sixty-seven complaints were pending for consideration and four were suspended, pending exhaustion of domestic remedies.

80. At its forty-first session, the Committee declared inadmissible complaint No. 323/2007 (*P.K. v. Spain*). The complainant alleged that Spain had violated article 1, paragraph 1, articles 11, 12 and 13,

article 14, paragraph 1, and article 16, paragraph 1, of the Convention. He further claimed a violation of article 3 because, if returned to India, the alleged victims would be subjected to torture or cruel, inhuman and degrading treatment, taking into account the conflict in Kashmir and the persecution they would allegedly face as a result of this conflict. The Committee declared this complaint inadmissible, having concluded that the complainant did not have *locus standi* to act on behalf of the alleged victims in accordance with article 22, paragraph 1, of the Convention. The text of this decision is reproduced in annex XIII, section B, to the present report.

81. Also at its forty-first session, the Committee adopted Views on complaints Nos. 257/2004 (*Keremedchiev v. Bulgaria*), 285/2006 (*A.A. et al. v. Switzerland*), 291/2006 (*Saadia Ali v. Tunisia*), 306/2006 (*E.J. et al. v. Sweden*), 316/2007 (*L.J.R. v. Australia*), 326/2007 (*M.F. v. Sweden*), 332/2007 (*M.M. et al. v. Sweden*). The text of these decisions is reproduced in annex XIII, section A, to the present report.

82. Complaint No. 257/2004 (*Keremedchiev v. Bulgaria*), concerned a Bulgarian national who alleged that police officers used disproportionate force against him and that he was unable to obtain redress within the State party. The State party in turn argued that the police officers in question had acted lawfully, within their competencies defined by the Law on the Ministry of Interior, and that their acts do not constitute "torture" within the meaning of article 1, paragraph 1, of the Convention. Upon review of the medical reports provided by the complainant, the Committee observed that he suffered multiple bruising on various external parts of his body, to the extent that the injuries inflicted caused bruising to his kidneys and blood in his urine. In addition, the forensic medical report ordered by the authorities of the State party for the purposes of the investigation, attests to the injuries described in the two earlier medical reports and gives the view that these injuries could have arisen at the time of and in the manner described by the complainant. While recognizing that pain and suffering may arise from a lawful arrest of an uncooperative and/or violent individual, the Committee considered that the use of force in such circumstances should be limited to what is necessary and proportionate. The State party argued that the force used was "necessary", and stated that the complainant had to be handcuffed, however it did not describe the type of force used nor said whether and/or how it was proportionate, i.e. how the intensity of the force used was necessary in the particular circumstances of the case. The Committee considered the complainant's injuries too serious to correspond to the use of proportionate force by two police officers, particularly as it would appear that the complainant was unarmed. It found on the basis of the evidence before it that the treatment of the complainant by the police officers amounted to acts of cruel, inhuman or degrading treatment or punishment, contrary to article 16 of the Convention. The Committee also concluded that the investigation into the incident in question did not meet the requirements of impartiality under article 12 of the Convention.

83. Complaints Nos. 285/2006 (*A.A. et al. v. Switzerland*), 306/2006 (*E.J. et al. v. Sweden*), 326/2007 (*M.F. v. Sweden*), and 332/2007 (*M.M. et al. v. Sweden*) concerned asylum-seekers who claimed that their expulsion, return or extradition to their countries of origin would violate article 3 of the Convention, as there they would be at risk of being subjected to torture. The Committee, after examining the claims and evidence submitted by the complainants as well as the arguments from the States parties concerned concluded that such risk had not been established. Accordingly, no breach of article 3 was found in these cases.

84. Complaint No. 291/2006 (*Saadia Ali v. Tunisia*), concerned a French-Tunisian national who claimed a violation of articles 1 and 2, as the State party had failed in its duty to take effective measures to prevent acts of torture and used its own security forces to submit the complainant to acts comparable to acts of torture. The aim was to punish and intimidate her because of what she had said to the official. She also claimed that the acts of torture to which she was subjected were not an isolated incident or mistake. According to her, the widespread use of torture by the Tunisian security forces has been widely documented, but the serious concerns expressed by the Committee and other treaty bodies about practices affecting detainees did not seem to have led to a review of the standards and methods that could put an end to such abuse. The Committee took note of the complaint submitted and the supporting medical certificates describing the physical injuries inflicted on the complainant, which can be characterized as severe pain and suffering inflicted deliberately by officials with a view to punishing her for her words addressed to the registrar of the Court of First Instance in Tunis. It considered that the acts to which the complainant was subjected amounted to acts of torture within the meaning of article 1 of the Convention. In the light of the finding of a violation of article 1 of the Convention, the Committee decided not to consider whether there was a violation of article 16, paragraph 1, as the treatment suffered by the complainant in breach of article 1 of the Convention exceeded the treatment encompassed in article 16. Regarding articles 2 and 11, the Committee concluded that the documents communicated to it provided no proof that the State party had failed to discharge its obligations under these provisions of the Convention. The Committee also considered that a delay of 23 months before initiation of an investigation into torture allegations was excessive and did not meet the requirements of article 12 of the Convention. Nor did the State party fulfil its obligation under article 13 to ensure that the complainant had the right to complain to and to have her case promptly and impartially investigated by its competent authorities. Given the length of time that has elapsed since the complainant attempted to initiate proceedings at the domestic level and given the lack of information from the State party concerning the completion of the investigation which was still under way at the time the complaint was considered, the Committee concluded that the State party has also breached its obligations under article 14 of the Convention.

85. In complaint No. 316/2007 (*L.J.R. v. Australia*), the complainant claimed that his extradition to the United States of America would constitute a breach of article 3 of the Convention. He also claimed that while being held in Australian prisons, he was subjected to treatment amounting to torture and cruel, inhuman or degrading treatment or punishment by other inmates or by prison guards. At the admissibility stage, the Committee considered that the complainant's allegations that he would not have a fair trial and that, despite the assurances given, he might be sentenced to death fell outside the scope of the Convention. On the merits, the Committee concluded that the complainant's allegations remained of a general nature and that he did not provide specific evidence about the ill-treatment he alleged to had been subjected to when questioned by the Californian police. No significant evidence was provided either that the conditions in the prison or prisons in which he would be held in California generally amount to torture within the meaning of article 1 of the Convention, or that the circumstances of his case were such that he would be subjected to treatment falling under that provision. Furthermore, the State party considered that the United States was bound by the assurances it provided to the effect that the author, if found guilty, would not be sentenced to death penalty. For the above-mentioned reasons, the Committee found that the complainant has failed to substantiate his

claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to the United States.

86. At its forty-second session, the Committee adopted decisions on the merits in respect of complaints Nos. 261/2005 (*Besim Osmani v. Serbia*) and 324/2007 (*Mr. X. v. Australia*). The text of these decisions is also reproduced in annex XIII, section A, to the present report.

87. In its decision on complaint No. 261/2005 (*Besim Osmani v. Serbia*), the Committee considered that the infliction of physical and mental suffering aggravated by the complainant's particular vulnerability, due to his Roma ethnic origin and unavoidable association with a minority historically subjected to discrimination and prejudice, reached the threshold of cruel, inhuman or degrading treatment or punishment. Irrespective of whether the persons who had caused bodily injury to the complainant and verbally abused him were or were not public officials, the authorities of the State party who witnessed the events and failed to intervene to prevent the abuse have, at least "consented or acquiesced" to it, within the meaning of article 16 of the Convention, which the Committee considered to be violated. It also found that the investigation conducted by the authorities of the State party did not satisfy the requirements of article 12. Nor had the State party fulfilled its obligation under article 13 to ensure that the complainant had the right to complain to, and to have his case promptly and impartially investigated, by its competent authorities. Although not expressly provided for in the Convention for victims of ill-treatment other than torture, the Committee considered that the positive obligations of the State party under article 16 included a duty to provide the complainant with fair and adequate compensation.

88. Complaint No. 324/2007 (*Mr. X. v. Australia*), concerned a Palestinian born in Lebanon, a former member of the Lebanese armed forces, who allegedly had taken part in the 1982 massacre in the Sabra and Shatila refugee camps as member of the Christian Democrats (Phalangists) militia. He became an assistant to one of the militia's leaders in Lebanon, and allegedly misappropriated funds belonging to the organization. He fled to Germany and was granted political asylum there. Later, he was located in Germany by his previous superior and started to receive threats from him. Given that in the meantime he had committed crimes in Germany and had been sentenced to a prison term in Germany, he lost his refugee status. After having serviced his term, he travelled to Australia on a false identity and sought political asylum there. His request was rejected and he risked a forcible return to Lebanon. The complainant claimed that in case of his forcible removal, Australia would breach his rights under article 3 of the Convention. The Committee concluded, on the merits, that the complainant failed to demonstrate that he would face a *foreseeable*, *real* and *personal* risk of being subjected to torture in Lebanon if returned there, and that therefore his removal would not constitute a breach of the Convention.

D. Follow-up activities

89. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the

Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

90. During its thirty-fourth session, the Committee, through its Special Rapporteur on follow-up to decisions, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); Serbia and Montenegro (with respect to *Dimitrov*, No. 171/2000, *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000 and *Dragan Dimitrijevic*, No. 207/2002); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

91. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);[3] *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), *the Netherlands* (with respect to *A.J.*, No. 91/1997); *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakaflaki v. Sweden* (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No. 101/1997); *A.S. v. Sweden* (No. 149/1999); *Chedli Ben Ahmed Karoui v. Sweden* (No. 185/2001); *Dar v. Norway*[4] (No. 249/2004); *Tharina v. Sweden* (No. 266/2003); *C.T. and K.M. v. Sweden* (No. 279/2005); and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

92. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998); *Arana v. France* (No. 63/1997); and *Ltaief v. Tunisia* (No. 189/2001). In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004).

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[3] Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provided satisfactory information in this regard (see chart below).

[4] The State had already remedied the breach prior to consideration of the case.

93. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Falcon Rios v. Canada* (No. 133/1999); *Dadar v. Canada* (No. 258/2004); *Brada v. France* (No. 195/2003); *Suleymane Guengueng and others v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Encarnación Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002*); Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Tebourski v. France* (No. 300/2006); and *Besim Osmani v. Republic of Serbia* (No. 261/2005) (response from State party not due until 9 August 2009).

94. During the forty-first and forty-second sessions, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the last annual report with respect to the following cases: *Suleymane Guengueng and others v. Senegal* (No. 181/2001); *Agiza v. Sweden* (No. 233/2003); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Jean-Patrick Iya v. Switzerland* (No. 299/2006); *A. v. the Netherlands* (No. 91/1997); *Encarnación Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006).

95. Represented below is a comprehensive report of replies received with regard to all 48 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

Complaints in which the Committee has found violations of the Convention up to the forty-second session

State party	**AUSTRIA**
Case	**Halimi-Nedibi Quani, 8/1991**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.

Due date for State party response	None
Date of reply	12 January 2007
State party response	The decision of the Committee was communicated to the heads of all public prosecutors' offices. The prosecution authorities were asked to follow the general principles contained in the Committee's relevant Views. The Decree of the Federal Ministry for Justice dated 30 September 1999 reaffirmed the standing instruction to the prosecutors' offices to follow up on every case of an allegation of mistreatment by law enforcement authorities by launching preliminary investigations or by means of judicial pretrial inquiries. Concurrently, the Federal Ministry of the Interior requested the law enforcement authorities to give notice to the competent prosecutors' offices of allegations of mistreatment raised against their own officials and of other indications pointing to a relevant case without any delay. Furthermore, Decree of the Ministry of Interior of 10 November 2000 set forth that law enforcement authorities are bound to transmit a description of the facts or the complaint without delay to the prosecution, if one of their officials is the object of allegations of mistreatment. By Decree of the Federal Ministry of Justice of 21 December 2000, the heads of penal institutions were requested to follow the same proceedings in case of allegations against officials entrusted with the enforcement of sentences.
Complainant's response	None
Committee's decision	The Committee considered the response satisfactory, in view of the time lapsed since it adopted its Views and the vagueness of the remedy recommended. It decided to discontinue consideration of the case under the follow-up procedure.

State party	**AUSTRALIA**
Case	**Shek Elmi, 120/1998**
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	On 23 August 1999, the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999. On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom

	Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.
Author's response	N/A
Committee's decision	In light of the complainant's voluntary departure no further action was requested under follow-up.
State party	**AZERBAIJAN**
Case	**Pelit, 281/2005**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	30 April 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party (assurances had been granted).[5]
Remedy recommended	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	29 August 2007
Date of reply	4 September 2007
State party response	The Azerbaijani authorities obtained diplomatic assurances that the complainant would not be ill-treated or tortured after her return. Several

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[5] The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.

	mechanisms were put in place for a post extradition monitoring. Thus, she was visited in prison by the First Secretary of the Azerbaijani Embassy and the visit took place in private. During the meeting she stated that she had not been subjected to torture or ill-treatment and was examined by a doctor who did not reveal any health problems. She was given the opportunity to meet with her lawyer and close relatives and to make phone calls. She was also allowed to receive parcels, newspapers and other literature. On 12 April 1997, she was released by decision of the Istanbul Court on Serious Crimes.
Complainant's response	On 13 November 2007, counsel informed the Committee that Ms. Pelit had been sentenced to six years imprisonment on 1 November 2007. Her Istanbul lawyer had appealed the judgement.
Committee's decision	The Committee considers the dialogue ongoing. It decided that the State party should continue monitoring the situation of the author in Turkey and keep the Committee informed.
State party	**BULGARIA**
Case	**Keremedchiev, 257/2004**
Nationality and country of removal if applicable	N/A
Views adopted on	11 November 2008
Issues and violations found	Cruel, inhuman or degrading treatment or punishment, prompt and impartial investigation - articles 12 and 16, paragraph 1
Interim measures granted and State party response	N/A
Remedy recommended	An effective remedy to the complainant, including fair and adequate compensation for the suffering inflicted, in line with the Committee's general comment No. 2 (2007), as well as medical rehabilitation.

Due date for State party response	17 February 2009
Date of reply	None
State party response	None
Complainant's response	N/A
Committee's decision	Follow-up dialogue ongoing
State party	**CANADA**
Case	**Tahir Hussain Khan, 15/1994**
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to the Rapporteur, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Complainant's response	None
Committee's decision	Follow-up dialogue ongoing
Case	**Falcon Rios, 133/1999**
Nationality and country of removal if applicable	Mexican to Mexico

Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	Latest reply on 14 January 2008 (had previously responded on 9 March 2005 and 17 May 2007).
State party response	On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review. On 17 May 2007, the State party had informed the Committee that, on 28 March 2007, the complainant had filed two appeals before the Federal Court and that at that point, the Government of Canada did not intend to implement the order to return the complainant to Mexico.

	On 14 January 2008, the State party informed the Committee that the two appeals were dismissed by the Federal Court in June 2007, and that the immigration agent's decisions are now final. For the moment, however, it did not intend to return the complainant to Mexico. It will inform the Committee of any future developments in this case.
Complainant's response	On 5 February 2007, the complainant forwarded the Committee a copy of the results of his risk assessment, in which his request was denied and he was asked to leave the State party. No further information was provided.
Committee's decision	The Committee considers the dialogue ongoing.
Case	**Dadar, 258/2004**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	3 November 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Yes and State party acceded.
Remedy recommended	The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	26 February 2006
Date of reply	Latest reply 10 October 2007 (had previously responded on 22 March 2006 and 24 April 2006 - see annual report A/61/44 - and 9 August 2006 and 5 April 2007 - see annual report A/62/44).
State party response	The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since

his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response, see A/61/44.)

On 9 August 2006, the State party informed the Committee that on 16 May 2006, the complainant came to the Canadian Embassy in Tehran to pursue certain personal and administrative issues in Canada unrelated to the allegations before the Committee. He did not complain of any ill-treatment in Iran nor make any complaints about the Iranian authorities. As the complainant's visit confirmed previous information received from his nephew, the Canadian authorities requested that this matter be removed from consideration under the follow-up procedure.

On 5 April 2007, the State party responded to counsel's comments of 24 June 2006. It stated that it had no knowledge of the complainant's state of well-being and that his further questioning by the Iranian authorities would have been due to the discovery of the Committee's decision. The State party regards this decision as an "intervening factor", subsequent to his return that it could not have taken into account at the time of his return. In addition, the complainant's concerns do not disclose any complaint that, were it to be made to the Committee, could give rise to a violation of a right under the Convention. Questioning by the authorities does not amount to torture. In any event, his fear of torture during questioning is speculative and hypothetical. Given Iran's ratification of the International Covenant on Civil and Political Rights and the possibility for the complainant to use United Nations special procedure mechanisms such as the Special Rapporteur on the question of torture, it considers the United Nations better placed to make enquiries about the complainant's well-being.

On 10 October 2007, the State party reiterates that the complainant has not been tortured since his return to Iran. Therefore, Canada has fully complied with its obligations under article 3 of the Convention and is under no obligation to monitor the complainant's condition. The absence of evidence of torture upon return supports Canada's position that it should not be held responsible for a purported violation of article 3 when subsequent events confirm its assessment that the complainant was not at substantial risk of torture. In the circumstances, the State party reiterates its request that the case be removed from the agenda of the follow-up procedure.

Complainant's response

The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran.

The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is persona non grata in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to treat his condition.

On 29 June 2006, counsel informed the Committee that subsequent to his initial detention, the complainant resided under house arrest living with his aged mother. On several occasions the Iranian authorities asked him to re-attend for further

	questioning. The questioning pertained, inter alia, to the complainant's political activities while in Canada. The complainant had expressed dissatisfaction with his apparent status in Iran as a persona non grata and said that he lacked status to obtain employment or travel. He was also unable to obtain the medication he received in Canada to treat his medical condition. Moreover, the Iranian authorities had delivered a copy of the Committee's decision to his home and requested his attendance for questioning. On 1 June 2007, counsel informed the Committee that but for the intervention of the complainant's brother prior to his arrival in Tehran and during the period of his detention immediately following his arrival, with a high ranking member of the Iranian Intelligence Service, the complainant would have been tortured and possibly executed. He requests that the case not be removed from the Committee's follow-up procedure.
Action taken	See the Committee's annual report (A/61/44) for an account of the contents of notes verbales sent from the Special Rapporteur to the State party.
Committee's decision	During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The dialogue is ongoing.
Case	**Bachan Singh Sogi, 297/2006**
Nationality and country of removal if applicable	Indian to India
Views adopted on	16 November 2007

Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested but rejected by the State party.[6]
Remedy recommended	To make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.
Due date for State party response	28 February 2008
Date of reply	7 April 2009 (the State party had previously responded on 29 February 2008 and 21 October 2008).
State party response	On 29 February 2008, the State party regretted that it was not in a position to implement the Committee's Views. It did not consider either a request for interim measures of protection or the Committee's Views themselves to be legally binding and is of the view that it has fulfilled all of its international obligations. Its failure to comply with the Committee's Views should not be interpreted as disrespect for the Committee's work. It submitted that the Government of India is better placed to advise the Committee on the complainant's whereabouts and well-being and reminds the Committee that India is a party to the Convention as well as the Covenant on Civil and Political Rights. However, it has written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for updated information on the complainant.

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[6] "As regards non-compliance with the Committee's requests of 14 and 30 June 2006 to suspend removal, the Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the State party's obligations include observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 108 of the rules of procedure, which is specifically intended to give meaning and scope to articles 3 and 22 of the Convention. (See *Dar v. Norway*, communication No. 249/2004, Views of 11 May 2007, para. 16.3; and *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.6). Consequently the Committee considers that, by sending the complainant back to India despite the Committee's repeated requests for interim measures, the State party has committed a breach of its obligations under articles 3 and 22 of the Convention."

The State party submitted that the decision to return the complainant was not a matter of "exceptional circumstances", as suggested by the Committee (para. 10.2). It reminded the Committee that the decision of 2 December 2003 was cancelled by the Court of Federal Appeal of 6 July 2005 and that the complainant's deportation was based on the decision of 11 May 2006. In this latter decision, the Minister's delegate had concluded that there was no risk of torture to the complainant and thus it was not necessary to balance the aspect of risk with that of danger to society to determine whether the complainant's situation gave way to "exceptional circumstances" justifying his return despite the risk of torture.

The State party contested the conclusion that the Minister's delegate denied the existence of a risk and that the decision was not motivated. The existence of a new law in India was not the only basis upon which the delegate made his decision. He took into account the general human rights situation in India as well as the particular circumstances of the complainant's case. The soundness of this decision was confirmed by the Court of Federal Appeal on 23 June 2006.

The State party contested the Committee's View that its determination that the complainant would not risk torture was based on information which had not been divulged to the complainant. The State party reiterated that the evaluation of risk was undertaken independently to the question of the threat the complainant posed to society, and the proof in question related only to the issue of danger posed. In addition, the law itself which allows for the consideration of information to which a complainant has not been made privy was considered by the Court of Federal Appeal in the complainant's case to be constitutional and the Human Rights Committee did not consider a similar procedure contrary to the Covenant on Civil and Political Rights.

However, the State party informed the Committee that the law had been amended and that since 22 February 2008, to the extent that the nomination of a "special lawyer" is authorized to defend the individual in his absence and in the absence of his own lawyer, when such information is considered in camera.

As to the Committee's point that it is entitled to freely assess the facts of each case (para. 10.3), the State party referred to jurisprudence in which the Committee found that it would not question the conclusion of national authorities unless there was a manifest error, abuse of process, or grave irregularity, etc. (see cases 282/2005 and 193/2001). In this context, it submits that the delegate's decision was reviewed in detail by the Court of Federal Appeal, which itself reviewed all the original documentation submitted to support his claims as well as new documents and found that it could not conclude that the delegate's conclusions were unreasonable.

On 21 October 2008, the State party provided a supplementary reply. It denied the author's allegations that his rights were violated by the Canadian authorities during his removal from Canada. It explained that in such circumstances where an individual being returned poses a great threat to security he/she is returned by a chartered rather than commercial airline. The complainant's hands and feet were handcuffed, the handcuffs on his hands were connected to a belt attached to his seatbelt and those on his feet were attached to a security strap. He was held in his chair by a belt around his body. These measures are always taken in cases where there is a very high security risk on a chartered flight. These measures did not prevent him from moving his hands and feet to some extent or from eating or drinking. The authorities offered to change the position of his seat on several occasions but he refused. As to food, the complainant was offered special vegetarian meals but other than apple juice he refused to accept anything. The chemical toilet on the plane had not been assembled and could not be used so "*un dispositif sanitaire*" was made available to the complainant. At the time of depart there were no female guards aboard the plane. Unfortunately, the complainant could not use the "*dispositif sanitaire*" successfully.

The State party notes that it is strange that the complainant did not raise these allegations earlier in the procedure despite the fact that he made two submissions to the Committee prior to his departure and prior to the Committee making its decision. The Committee has already made its decision and in any event the communication was only brought under article 3 of the Convention.

As to the allegation that the complainant was tortured in India upon his return, the State party submitted that such allegations are very worrying but noted that these allegations were not made prior to the Committee's decision in either of the complainant's submissions of 5 April 2007 or 24 September 2007. It also noted that certain Indian newspapers reported that the complainant was brought before a judge on 5 September 2006 six days after his arrival in India. In any event, the complainant is no longer within Canada's jurisdiction and although India may not have ratified the Convention, it has ratified the Covenant on Civil and Political Rights and other mechanisms, United Nations and otherwise, which may be used in allegations of torture. As to whether the State party has received a response from India to its initial letter, the State party explains that it did receive such a letter but that no information was provided on the place of residence or the state of well-being of the complainant. In addition, it states that given the claim by counsel that the State party's last note to India may have created additional risks for the complainant, the State party is not disposed to communicate again with the Indian authorities.

On 7 April 2009, the State party responded to the complainant's submission of 2 February 2009 as well as the Committee's concerns with respect to the way in which the complainant was treated during his deportation to India. It submits that he was treated with the utmost respect and dignity possible while at the same time assuring the security of all those involved. It notes the Committee's comment that it was not in a position under the follow-up procedure to examine new claims against Canada. Thus, the State party is of the view that this case is closed and should no longer be considered under the follow-up procedure.

Complainant's response

On 12 May 2008, the complainant's representative commented on the State party's response. She reiterates arguments previously made and argued that subsequent changes in legislation do not justify the violation of the complainant's rights, nor the authorities' refusal to grant him compensation. The State party is violating its obligations under international law by failing to recognize and implement the Views as well as its failure to respect the Committee's request for interim measures of protection. The efforts made by the State party to find out the current situation of the complainant are inadequate, and it has neglected to inform both the complainant's representative and the Committee of the outcome of its request to the Indian Ministry of Foreign Affairs. Indeed, in the view of the complainant's representative, such a contact may have created additional risks for the author. Also, despite the State party's view to the contrary there is a lot of documentary proof that the Indian authorities continue to practice torture.

The following information was provided to the complainant's counsel from India over the telephone on 27 February 2008. As to his removal from Canada counsel states that the complainant was tied up for the whole 20 hours of his return to India, and that despite repeated requests the Canadian guards refused to loosen the ties around him which were causing pain. In addition, he was refused permission to use the toilet and had to relieve himself in a bottle in front of female guards, which he found humiliating. He was also denied food and water for the entire journey. In the representative's view, this treatment by the Canadian authorities amounted to a violation of his fundamental rights.

The complainant also described his treatment upon arrival in India. Upon return to India, he was handed over to the Indian authorities and was interrogated at the airport for about five hours during which he was accused, inter alia, of being a terrorist. He was threatened with death if he did not answer the questions posed. He was then driven to a police station in Guraspur, which took five hours and during which he was brutally beaten, with fists and feet and sat upon after being made to lay on the floor of the vehicle. In addition, his hair and beard were pulled which is against his religion. Upon arrival at the police station, he was interrogated and tortured in what he believes to have been an unused toilet. He was given electric shocks on his fingers, temples, and penis, a heavy machine was rolled over him, causing him severe pain and he was beaten with sticks and fists. He was poorly fed during these six days in detention and neither his family nor lawyer knew of his whereabouts. In or around the sixth day, the complainant was transferred to another police station where he suffered similar treatment and remained for three further days. On the ninth day he was brought before a judge for the first time and saw his family. After being accused of having supplied explosives to persons accused of terrorism and plotting to murder leaders of the country, he was transferred to another detention centre in Nabha where he was detained for a further seven months without seeing any member of his family or his lawyer. On 29 January 2007, he appealed the decision which had ordered his preliminary detention and on 3 February 2007, was released subject to certain conditions.

Since his release, both the complainant and members of his family have been watched and are interrogated every two or four days. The complainant has been interrogated in the police station about six times during which he was psychologically harassed and threatened. All those involved with the author, including his family, his brother (who also claims to have been tortured), and the doctor who examined the complainant after his release are too afraid to provide any information relating to the abuse they and the complainant have all been subjected to. The complainant fears reprisals from India if the torture and ill-treatment to which he has been subjected are disclosed.

In terms of remedy, counsel requests an investigation by the Canadian authorities into the complainant's allegations of torture and ill-treatment since his arrival in India (as in the *Agiza v. Sweden*, case 233/2003). Counsel also requests Canada to take all necessary measures to return the complainant to Canada and to allow him to stay on a permanent basis (as was done in *Dar v. Norway*, 249/2004). In the alternative, counsel suggests that the State party arrange for a third country to accept the complainant on a permanent basis. Finally, she requested a figure of 368,250.00 Canadian dollars by way of compensation for the damages suffered.

On 2 February 2009, the complainant's counsel responded to the State party's submission of 21 October 2008. She reiterates arguments previously made and states that the reason the complainant did not complain of his treatment by the Canadian authorities during his return to India or indeed of his treatment upon arrival in India was due to the judicial proceedings instituted against him in India and an inability to communicate with his representative. In addition, the complainant's representative states that he claims to have been threatened by the Indian authorities not to divulge the ill-treatment to which he was subjected and for this reason remains reticent to provide many details. According to the representative, the complainant was in the custody of the police until 13 July 2006, which was his first court appearance. Given the threats made against him, the complainant fears that any complaints to the Indian authorities themselves will result in further ill-treatment. The representative argues that the efforts made by the Canadian authorities to determine where the complainant is as well as his state of well-being have been insufficient. She clarifies that the *exchange* of information between the Canadian and Indian authorities may put the complainant at risk but that this would not be the case if the State party were to make a *request* for information to the Indian authorities upon the condition that it did not mention the allegations of torture by the Indian authorities against the complainant.

Committee's decision

During the fortieth session, the Committee decided to write to the State party informing it of its obligations under articles 3 and 22 of the Convention and requesting the State party inter alia to determine, in consultation with the Indian authorities, the current situation, whereabouts and well-being of the complainant in India.

As to the new allegations made by the complainant in counsel's submission of 12 May 2008, with respect to the complainant's treatment by the Canadian authorities during his return to India, the Committee noted that it had already considered this communication, upon which it adopted its Views, and that it was now currently being considered under the follow-up procedure. It regretted that these allegations had not been made prior to its consideration. However, in its response of 21 October 2008, the State party had confirmed certain aspects of the complainant's claims, in particular, relating to the manner in which he was tied up for the entire journey, as well as the failure to provide him with adequate sanitary facilities during this long-haul flight.

Although the Committee considered that it could not examine whether the State party violated the Convention with respect to these new allegations, under this procedure and outside the context of a new communication, it expressed its concern at the way in which the complainant was treated by the State party during his removal, as confirmed by the State party itself. The Committee considered that the measures employed, in particular, the fact that the complainant was rendered totally immobile for the entire trip with only a limited ability to move his hands and feet, as well as the provision of a mere "*dispositif sanitaire*", described by the complainant as a bottle, in which to relieve himself, were totally unsatisfactory and inadequate at the very least.

As to whether the State party should make further attempts to request information on the complainant's location and state of well-being, the Committee noted that the complainant's representative initially indicated that such efforts may create additional risks for the complainant, but in her submission of 2 February 2009, she clarified that a request for information only with no mention of allegations of torture against the Indian authorities would go some way to remedying the violation suffered.

During the forty-second session, and despite the State party's request not to consider this matter any further under follow-up, the Committee decided to request the State party to contact the Indian authorities to find out the complainant's location and state of well-being. It is reminded of its obligation to make reparation for the violation of article 3. Serious consideration should be made of any future request by the complainant to return to the State party.

The Committee considers the follow-up dialogue ongoing.

State party	**FRANCE**
Case	**Arana, 63/1997**
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999
Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3.
Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion.[7]
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, inter alia, that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response, see the annual report of the Committee (A/61/44).
Complainant's response	On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no

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[7] No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty-fifth session.

	possibility of appeal from a decision of the "Audiencia Nacional". In addition, he stated that since the Committee's decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain. Also on 18 January 2001, the French Ministry of the Interior, stated, inter alia, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities. However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment by the Spanish authorities is corroborated by a number of sources.
Committee's decision	Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.
Case	**Brada, 195/2003**
Nationality and country of removal if applicable	Algerian to Algeria
Views adopted on	17 May 2005
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party.[8]

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[8] "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

Remedy recommended	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.
Due date for State party response	None
Date of reply	21 September 2005
State party response	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
Complainant's response	None
Committee's decision	Follow-up dialogue ongoing
Case	**Tebourski, 300/2006**
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	1 May 2007
Issues and violations found	Removal - articles 3 and 22

Interim measures granted and State party response	Granted but not acceded to by the State party.[9]
Remedy recommended	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	13 August 2007
Date of reply	15 August 2007
State party response	Following several requests for information made by the State party, the Tunisian authorities indicated that the complainant had not been disturbed since his arrival in Tunisia on 7 August 2006 and that no legal action had been initiated against him. He lives with his family in Testour, Beja Governorate. The State party monitors the situation of the complainant and is trying to verify the information provided by the Tunisian authorities.
Complainant's response	Not yet received
Committee's decision	The Committee considers the dialogue ongoing.
State party	**THE NETHERLANDS**
Case	**A.J., 91/1997**
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3

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[9] The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the Committee with a fait accompli, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	7 July 2008
State party response	The State party informed the Committee that following the Committee's decision the Government refrained from expelling the complainant to Tunisia and in response to his request for asylum provided him with a residence permit valid from 2 January 2001 to be renewed on 2 January 2011.
Complainant's response	Awaiting response
Committee's decision	In light of the State party's decision to grant the complainant a residence permit, the Committee decides to close the dialogue with the State party under the follow-up procedure.

State party	**NORWAY**
Case	**Dar, 249/2004**
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	11 May 2007
Issues and violations found	Removal - article 22

Interim measures granted and State party response	Requested but not acceded to by the State party.[10]
Remedy recommended	None - State party has already remedied the breach.
Due date for State party response	N/A
Committee's decision	No consideration under the follow-up procedure necessary.
State party	**SENEGAL**
Case	**Suleymane Guengueng and others, 181/2001**
Nationality and country of removal if applicable	N/A
Views adopted on	17 May 2006
Issues and violations found	Failure to prosecute - articles 5, paragraph 2, and 7
Interim measures granted and State party response	N/A
Remedy recommended	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.
Due date for State party response	16 August 2006

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[10] "The Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a merely theoretical protection. By failing to respect the request for interim measures made to it, and to inform the Committee of the deportation of the complainant, the State party committed a breach of its obligations of cooperating in good faith with the Committee, under article 22 of the Convention. However, in the present case, the Committee observes that the State party facilitated the safe return of the complainant to Norway on 31 March 2006, and that the State party informed the Committee shortly thereafter, on 5 April. In addition, the Committee notes that the State party has granted the complainant a residence permit for 3 years. By doing so, it has remedied the breach of its obligations under article 22 of the Convention."

Date of reply	17 June 2008 (had previously responded on 18 August, 28 September 2006, 8 March 2007 and 31 July 2007).
State party response	On 18 August 2006, the State party denied that it had violated the Convention, and reiterated its arguments on the merits, including its argument on article 5 that under the Convention a State party is not obliged to meet its obligations within a particular time. The extradition request was dealt with under national law applicable between the State party and States with which it does not have an extradition treaty. It stated that any other way of handling this case would have violated national law. The integration of article 5 into domestic law is in its final stage and the relevant text would be examined by the Legislative Authority. To avoid possible impunity, the State party submitted that it had deferred the case to the African Union for consideration, thus avoiding a violation of article 7. As the African Union had not yet considered the case at that point, it would be impossible to provide the complainants with compensation. On 28 September 2006, the State party informed the Committee that the Committee of Eminent Jurists of the African Union had taken the decision to entrust Senegal with the task of trying Mr. Habré of the charges against him. It stated that its judicial authorities were looking into the judicial feasibility and the necessary elements of a contract to be signed between the State party and the African Union on logistics and finance. On 7 March 2007, the State party provided the following update. It submitted that on 9 November 2006, the Council of Ministers had adopted two new laws relating to the recognition of genocide, war crimes, and crimes against humanity as well as universal jurisdiction and judicial cooperation. The adoption of these laws fills the legal gap which had prevented the State party from recognizing the Habré case. On 23 November 2006, a working group was set up to

consider the necessary measures to be taken to try Mr. Habré in a fair manner. This working group has considered the following: texts of the National Assembly on legal changes to remove obstacles highlighted during the consideration of the request for extradition on 20 September 2005; a framework for the infrastructural, legislative and administrative changes necessary to conform with the African Union's request for a fair trial; measures to be taken in the diplomatic sphere to ensure cooperation between all of the countries concerned as well as other States and the African Union; security issues; and financial support. These elements were included in a report to the African Union during its eighth session which was held between 29 and 30 January 2007.

The report underlined the necessity to mobilize financial resources from the international community.

On 31 July 2007 the State party informed the Committee that, contrary to the statement of counsel, the crime of torture is defined in article 295-1 of Law No. 96-15 and its scope has been strengthened by article 431-6 of Law 2007-02. It also emphasizes that the conduct of proceedings against Mr. Habré require considerable financial resources. For this reason, the African Union invited its member States and the international community to assist Senegal in that respect. Furthermore, the proposals made by the working group referred to above regarding the trial of Mr. Habré were submitted to the 8th Conference of Heads of State and Government of the African Union and approved. The Senegalese authorities are evaluating the cost of the proceedings and a decision in that respect will be adopted soon. In any case, they intend to fill the mandate given to them by the African Union and to meet Senegal's treaty obligations.

On 17 June 2008, the State party confirmed the information provided by the State party's representative to the Rapporteur during its meeting on 15 May 2008. It submits that the passing of a law which will amend its Constitution will shortly be confirmed by Parliament. This law will add a new paragraph to article 9 of the Constitution which will circumvent the current prohibition on the retroactivity of criminal law and allow individuals to be judged for crimes including genocide, crimes against humanity and war crimes, which were considered crimes under international law at the time in which they were committed. On the issue of the budget, the State party submits that the figure of 18 million francs CFA (equivalent to around 43,000 USD) was the initial figure anticipated. That a counter-proposal has been examined by the cabinet and that once this report is final a meeting will be organized in Dakar with the potential donors. To express its commitment to the process, the State itself has contributed 1 million francs CFA (equivalent to 2,400 USD) to commence the process. The State party has also taken account of the European Union experts recommendation, and named Mr. Ibrahima Gueye, Judge and President of the Court of Cassation as the "Coordinator" of the process. It is also foreseen to reinforce the human resources of the Tribunal in Dakar which will try Mr. Habré, as well as the designation of the necessary judges.

Complainant's response

On 9 October 2006, the complainants commented on the State party's submission of 18 August 2006. They stated that the State party had provided no information on what action it intends to take to implement the Committee's decision. Even three months after the African Union's decision that Senegal should try Mr. Habré, the State party had still failed to clarify how it intends to implement the decision.

On 24 April 2007, the complainants responded to the State party's submission of 7 March 2007. They thanked the Committee for its decision and for the follow-up procedure which they are convinced play an important role in the State party's efforts to implement the decision. They greeted the judicial amendments referred to by the State party, which had prevented it from recognizing the Habré affair.

While recognizing the efforts made to date by the State party, the complainants highlighted the fact that the decision has not yet been fully implemented and that this case has not yet been submitted to the competent authorities. They also highlighted the following points:

1. The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes.

2. Given that the State party has an obligation to proceed with the trial or extradite Mr. Habré, the same should not be conditional upon the receipt by the State party of financial assistance. The complainants assume that this request is made to ensure that a trial is carried out in the best possible conditions.

3. Irrespective of what the African Union has decided with respect to this affair, it can have no implications as to the State party's obligation to recognize this affair and to submit it to the competent jurisdiction.

On 19 October 2007, counsel expressed concern at the fact that 17 months after the Committee had taken its decision, no criminal proceedings had yet been initiated in the State party and no decision regarding extradition had been taken. He emphasized that time was very important for the victims and that one of the complainants had died as a result of the ill-treatment suffered during Habré's regime. Counsel requested the Committee to continue engaging the State party under the follow-up procedure.

On 7 April 2008, counsel reiterated his concern that despite the passage of 21 months since the Committee's decision, Mr. Habré has still neither been brought to trial nor extradited. He recalls that the Ambassador, in his meeting with the Special Rapporteur during the November session of the Committee in 2007, indicated that the authorities were waiting for financial support from the international community. Apparently, this request for aid was made in July 2007 and responses were received from, among other countries, the European Union, France, Switzerland, Belgium and the Netherlands. These countries indicated that they would be prepared to assist financially as well as technically. The Senegalese authorities assured the victims last November that proceedings would not be held up but to date no date has been fixed for criminal action.

On 22 October 2008, counsel expressed his concern at an interview published in a Senegalese newspaper, in which the President of the Republic is reported as having said that, "*il n'est pas obligé de juger*" Mr. Habré and that due to the lack of financial assistance he is not going to, "*garder indéfiniment Habré au Sénégal*" but "*fera qu'il abandonne le Sénégal*". Counsel reiterated the measures taken to date for the purposes of trying Habré, including the fact that financial assistance has been offered by a number of countries but that the State party has not managed for two years to present a reasonable budget for his trial. The complainants are concerned at what counsel refers to as the "threat" from the President to expel Habré from Senegal, reminds the Committee that there is an extradition request from Belgium which remains pending, and requests the Committee to ask Senegal not to expel him and to take the necessary measures to prevent him from leaving Senegal other than through an extradition procedure, as the Committee did in 2001.

Consultations with State party

During the thirty-ninth session, the Special Rapporteur on follow-up met with a representative of the Permanent Mission of Senegal who expressed the interest of the State party in continuing cooperation with the Committee on this

	case. He indicated that a cost assessment to carry out the trial had been made and a donors meeting at which European countries would participate would be held soon. On 15 May 2008, the Special Rapporteur met again with a State party representative. A copy of the letter from the complainants counsel, dated 7 April 2008, was given to the representative of the Mission for information. As to an update on the implementation of the Committee's decision, the representative stated that an expert working group had submitted its report to the Government on the modalities and budget of initiating proceedings and that this report had been sent to those countries which had expressed their willingness to assist Senegal. The European Union countries concerned returned the report with a counter-proposal, which the President is currently reviewing. In addition, the President, recognizing the importance of the affair, has put aside a certain sum of money (amount not provided) to commence proceedings. Legislative reform is also under way. The representative stated that a fuller explanation would be provided in writing from the State party and the Rapporteur gave the State party one month from the date of the meeting itself for the purposes of including it in this annual report.
Committee's decision	The Committee considers the follow-up dialogue ongoing.
State party	**SERBIA AND MONTENEGRO**
Case	**Ristic, 113/1998**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	11 May 2001
Issues and violations found	Failure to investigate allegations of torture by police - articles 12 and 13

Interim measures granted and State party response	None
Remedy recommended	Urges the State party to carry out such investigations without delay. An appropriate remedy.
Due date for State party response	6 January 1999
Date of reply	Latest note verbale 28 July 2006 (had replied on 5 August 2005 - see the annual report of the Committee, A/61/44).
State party response	The Committee will recall that by note verbale of 5 August 2005, the State party confirmed that the First Municipal Court in Belgrade by decision of 30 December 2004 found that the complainant's parents should be paid compensation. However, as this case is being appealed to the Belgrade District Court, this decision was neither effective nor enforceable at that stage. The State party also informed the Committee that the Municipal Court had found inadmissible the request to conduct a thorough and impartial investigation into the allegations of police brutality as a possible cause of Mr. Ristic's death. On 28 July 2006, the State party informed the Committee that the District Court of Belgrade had dismissed the complaint filed by the Republic of Serbia and the State Union of Serbia and Montenegro in May 2005. On 8 February 2006, the Supreme Court of Serbia dismissed as unfounded the revised statement of the State Union of Serbia and Montenegro, ruling that it is bound to meet its obligations under the Convention. It was also held responsible for the failure to launch a prompt, impartial and full investigation into the death of Milan Ristic.
Complainant's response	On 25 March 2005, the Committee received information from the Humanitarian Law Centre in Belgrade to the effect that the First Municipal Court in Belgrade had ordered the State party to pay

	compensation of 1,000,000 dinars to the complainant's parents for failure to conduct an expedient, impartial and comprehensive investigation into the causes of the complainant's death in compliance with the decision of the Committee against Torture.
Committee's decision	The follow-up dialogue is ongoing.

Case	**Hajrizi Dzemajl et al., 161/2000**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	21 November 2002
Issues and violations found	Burning and destruction of houses, failure to investigate and failure to provide compensation - articles 16, paragraph 1, 12 and 13[11]
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to conduct a proper investigation into the facts that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation.
Due date for State party response	None
Date of reply	See CAT/C/32/FU/1.

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[11] Regarding article 14, the Committee declared that article 16, paragraph 1, of the Convention does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation.

State party response	See first follow-up report (CAT/C/32/FU/1). Following the thirty-third session and while welcoming the State party's provision of compensation to the complainants for the violations found, the Committee considered that the State party should be reminded of its obligation to conduct a proper investigation into the case. During consideration of the State party's initial report to the Committee on 11 and 12 November 2008, the State party indicated that compensation had been paid to the complainants and that given the length of time since the incident in question, it would not be possible to make any further investigation.
Complainant's response	None
Committee's decision	Given the payment of compensation in this case, the fact that the case is quite old and the declaration of independence of the State party (the Republic of Montenegro) since the incident in question, the Committee decided that it need not consider this communication any further under the follow-up procedure.
Case	**Dimitrov, 171/2000**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	3 May 2005
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with articles 1, 12, 13 and 14
Interim measures granted and State party response	N/A
Date of reply	None
State party response	None

Complainant's response	N/A
Committee's decision	The follow-up dialogue is ongoing.
Case	**Dimitrijevic, 172/2000**
Nationality and country of removal if applicable	Serbian
Views adopted on	16 November 2005
Issues and violations found	Torture and failure to investigate - articles 1, 2, paragraphs 1, 12, 13, and !4
Interim measures granted and State party response	N/A
Remedy recommended	The Committee urges the State party to prosecute those responsible for the violations found and to provide compensation to the complainant, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	26 February 2006
Date of reply	None
State party response	None
Complainant's response	N/A
Committee's decision	The follow-up dialogue is ongoing.
Case	**Nikolic, 174/2000**
Nationality and country of removal if applicable	N/A
Views adopted on	24 November 2005
Issues and violations found	Failure to investigate - articles 12 and 13

Interim measures granted and State party response	N/A
Remedy recommended	Information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainant's son.
Due date for State party response	27 February 2006
Date of reply	None
State party response	None
Complainant's response	On 27 April 2009, the complainant indicated that on 2 March 2006, the Minister of Justice sent a letter to the Office of the District Public Prosecutor (ODPP) pointing to the binding nature of the Committee's decisions and requesting the initiation of an "appropriate procedure in order to establish the circumstances under which Nikola Nikolić lost his life". On 12 April 2006, the ODPP requested the Belgrade District Court Investigative Judge to procure a new forensic report to determine the complainant's cause of death. On 11 May 2006, the trial chamber of the District Court rendered a decision dismissing the request on the grounds that the cause of his death had been sufficiently clarified in the report to the Belgrade Medical School Expert Commission of 27 November 1996 and in its subsequent report. On 27 December 2007, the ODPP made an extraordinary request to the Serbian Supreme Court for "protection of legality", against the District Court decision. On 14 November 2008, the Supreme Court dismissed this request as unfounded. Thus, the complainant claims that the State party has failed to implement the Committee's decision and is responsible for repeating the violation of article 13.
Committee's decision	The follow-up dialogue is ongoing.

Case	**Dimitrijevic, Dragan, 207/2002**
Nationality and country of removal if applicable	Serbian
Views adopted on	24 November 2004
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with articles 1, 12, 13, and 14
Interim measures granted and State party response	None
Remedy recommended	To conduct a proper investigation into the facts alleged by the complainant.
Due date for State party response	February 2005
Date of reply	None
State party response	None
Complainant's response	On 1 September 2005, the complainant's representative informed the Committee that having made recent enquiries, it could find no indication that the State party had started any investigation into the facts alleged by the complainant.
Committee's decision	The follow-up dialogue is ongoing.
Case	**Besim Osmani, 261/2005**
Nationality and country of removal if applicable	N/A
Views adopted on	8 May 2009
Issues and violations found	Cruel, inhuman or degrading treatment or punishment, failure to investigate promptly and impartially, failure to provide compensation - article 16, paragraph 1; article 12; and article 13
Interim measures granted and State party response	N/A

Remedy recommended	The Committee urges the State party to conduct a proper investigation into the facts that occurred on 8 June 2000, prosecute and punish the persons responsible for those acts and provide the complainant with redress, including fair and adequate compensation.
Due date for State party response	12 August 2009
Date of reply	Not yet due
State party response	Not yet due
Complainant's response	N/A
Committee's decision	The follow-up dialogue is ongoing.
State party	**SPAIN**
Case	**Encarnación Blanco Abad, 59/1996.**
Nationality and country of removal if applicable	Spanish
Views adopted on	14 May 1998
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	23 January 2008
State party response	The State party indicated that it had already forwarded information in relation to the follow-up to this case in September 1998.
Complainant's response	N/A
Committee's decision	The follow-up dialogue is ongoing.

Case	**Urra Guridi, 212/2002**
Nationality and country of removal if applicable	Spanish
Views adopted on	17 May 2005
Issues and violations found	Failure to prevent and punish torture, and provide a remedy - articles 2, 4 and 14
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to ensure in practice that those individuals responsible of acts of torture be appropriately punished, to ensure the complainant full redress.
Due date for State party response	18 August 2005
Date of reply	23 January 2008
State party response	According to the State party, this case relates to a case in which officers of the Spanish security forces were condemned for the crime of torture, and later partially pardoned by the Government. The judgement is non-appealable. Civil liability was determined and the complainant was awarded compensation according to the damage suffered. As part of the measures to implement the decision, the State party disseminated it to different authorities, including the President of the Supreme Court, President of the Judiciary Council and President of the Constitutional Court.
Complainant's response	N/A
Committee's decision	The follow-up dialogue is ongoing.
State party	**SWEDEN**
Case	**Tapia Páez, 39/1996**
Nationality and country of removal if applicable	Peruvian to Peru

Views adopted on	28 April 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Gorki Ernesto Tapia Páez to Peru.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 23 June 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Kisoki, 41/1996**
Nationality and country of removal if applicable	Democratic Republic of the Congo citizen to the Democratic Republic of the Congo.
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to the Democratic Republic of the Congo.
Due date for State party response	None
Date of reply	23 August 2005

State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 7 November 1996.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Tala, 43/1996**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	15 November 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Kaveh Yaragh Tala to Iran.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Avedes Hamayak Korban, 88/1997**
Nationality and country of removal if applicable	Iraqi to Iraq

Views adopted on	16 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iraq. It also has an obligation to refrain from forcibly returning the complainant to Jordan, in view of the risk he would run of being expelled from that country to Iraq.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Ali Falakaflaki, 89/1997**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	8 May 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Ali Falakaflaki to the Islamic Republic of Iran.

Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 17 July 1998.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Orhan Ayas, 97/1997**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 8 July 1999.
Complainant's response	None

Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Halil Haydin, 101/1997**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	20 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 19 February 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**A.S., 149/1999**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	24 November 2000
Issues and violations found	Removal - article 3

Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iran or to any other country where she runs a real risk of being expelled or returned to Iran.
Due date for State party response	None
Date of reply	22 February 2001
State party response	The State party informed the Committee that on 30 January 2001, the Aliens Appeals Board examined a new application for residence permit lodged by the complainant. The Board decided to grant the complainant a permanent residence permit in Sweden and to quash the expulsion order. The Board also granted the complainant's son a permanent residence permit.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Chedli Ben Ahmed Karoui, 185/2001**
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	8 May 2002
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	None
Due date for State party response	None
Date of reply	23 August 2005

State party response	See first follow-up report (CAT/C/32/FU/1) in which it was stated that, on 4 June 2002, the Board revoked the expulsion decisions regarding the complainant and his family. They were also granted permanent residence permits on the basis of this decision.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Tharina, 226/2003**
Nationality and country of removal if applicable	Bangladeshi to Bangladesh
Views adopted on	6 May 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	Given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention. The Committee wishes to be informed, within 90 days, from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	15 August 2005
Date of reply	17 August 2005 (was not received by OHCHR, so resent by the State party on 29 June 2006).
State party response	On 20 June 2005, the Board decided to revoke the expulsion decision regarding the complainant and her daughter and to grant them residence permits.
Complainant's response	None
Committee's decision	No further consideration under the follow-up

	procedure as the State party has complied with the Committee's decision.
Case	**Agiza, 233/2003**
Nationality and country of removal if applicable	Egyptian to Egypt
Views adopted on	20 May 2005
Issues and violations found	Removal - articles 3 (substantive and procedural violations) on two counts and 22 on two counts.[12]
Interim measures granted and State party response	None
Remedy recommended	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	20 August 2005

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[12] (1) The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints' jurisdiction of the Committee. That jurisdiction included the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon the complainant's counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

(2) Having addressed the merits of the complaint, the Committee must address the failure of the State party to cooperate fully with the Committee in the resolution of the current complaint. The Committee observes that, by making the declaration provided for in article 22 extending to individual complainants the right to complain to the Committee alleging a breach of a State party's obligations under the Convention, a State party assumes an obligation to cooperate fully with the Committee, through the procedures set forth in article 22 and in the Committee's rules of procedure. In particular, article 22, paragraph 4, requires a State party to make available to the Committee all information relevant and necessary for the Committee appropriately to resolve the complaint presented to it. The Committee observes that its procedures are sufficiently flexible and its powers sufficiently broad to prevent an abuse of process in a particular case. It follows that the State party committed a breach of its obligations under article 22 of the Convention by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision.

Date of reply	Latest information 16 December 2008 (it also provided information on 25 May and 5 October 2007 and 18 August 2005) (see annual report of the Committee, A/61/44) and 1 September 2006 (see annual report of the Committee, A/62/44).
State party's response	The Committee will recall the State party's submission on follow-up in which it referred inter alia to the enactment of a new Aliens Act and the continual monitoring of the complainant by staff from the Swedish Embassy in Cairo. See annual report of the Committee (A/61/44) for a full accoun of its submission. On 1 September 2006, the State party provided an update on its monitoring of the complainant. It stated that embassy staff had made seven further visits to Mr. Agiza. Mr. Agiza had been in consistently good spirits and received regular visits in prison from his mother and brother. His health was said to be stable and he visited Manial Hospital once a week for physiotherapeutic treatment. The Embassy's staff has visited him now on 39 occasions and will continue the visits. On 25 May 2007, the State party reported that 5 additional visits to the complainant had been conducted, which made a total of 44 visits. His well-being and health remained unchanged. He had on one occasion obtained permission to telephone his wife and children and he received visits from his mother. His father died in December 2006, but he did not receive permission to attend the funeral. Early in 2007, Mr. Agiza lodged a request to be granted a permanent residence permit in Sweden as well as compensation. The Government instructed the Office of the Chancellor of Justice to attempt to reach an agreement with Mr. Agiza on the issue of compensation. The request for a residence permit is being dealt with by the Migration Board. On 5 October 2007, the State party informed the Committee of two further visits to Mr. Agiza.

conducted on 17 July and 19 September 2007, respectively. He kept repeating that he was feeling well, although in summer he complained about not receiving sufficiently frequent medical treatment. That situation seems to have again improved. The Embassy's staff has visited Mr. Agiza in the prison on 46 occasions. These visits will continue. Furthermore, it is not possible at this moment to predict when the Migration Board and the Chancellor of Justice will be able to conclude Mr. Agiza's cases.

The State party provided follow-up information during the examination of its third periodic report to the Committee, which took place during the Committee's fortieth session, between 28 April and 16 May 2008. It indicated to the Committee that the office of the Chancellor of Justice was considering a request from the complainant for compensation for the violation of his rights under the Convention.

On 16 December 2008, the State party informed the Committee that representatives of the Swedish Embassy in Cairo continued to visit the complainant regularly in prison and conducted their 53rd visit in November 2008. His family was due to visit him in December and he availed of the possibility on several occasions of contacting his family on a cell-phone provided by the Embassy.

It informed the Committee that compensation of SEK 3,097,920 (379,485.20 USD) was paid to the complainant's lawyer on 27 October 2008 following a settlement made by the Chancellor of Justice and the complainant. This compensation was paid in full and final settlement with the exception of non-pecuniary damage suffered as a result of a violation of article 8 of the ECHR, any damage suffered as a result of a violation of article 6 of the ECHR and any loss of income. The Chancellor decided that as the liability for the events were partly attributed to the Swedish Security police they should pay a portion of the award (SEK 250,000).

As to the complainant's application for a residents permit, this was turned down by the Migration Board on 9 October 2007, and subsequently by the Supreme Court of Migration on 25 February 2008. Both bodies were of the view that the preconditions for granting a residence permit were lacking, since he was still serving his prison sentence in Egypt, i.e. that he does not only intend to but also has a real possibility of coming and staying in the country. It remained with the government to examine the appeal which is still pending.

Complainant's response

On 31 October 2006, the complainant's counsel responded that he had a meeting with the Ambassador of the Swedish Embassy on 24 January 2006. During this meeting, counsel emphasized that it was essential that the embassy continue their visits as regularly as it has been doing. Counsel requested the State party to consider having a retrial in Sweden or to allow him to complete his imprisonment there, but the State party responded that no such steps were possible. In addition, requests for compensation ex gratia had been refused and it was suggested that a formal claim should be lodged under the Compensation Act. This has been done. According to counsel, although the monitoring aspect of the State party's efforts is satisfactory its efforts as a whole were said to be inadequate with respect to the request for contact with his family in Sweden, a retrial etc.

On 20 July 2007, counsel reported that the meetings between Mr. Agiza and staff from the Swedish Embassy took place under the presence of prison officials and were video recorded. The officials had ordered Mr. Agiza not to express any criticism against the prison conditions and he was under the threat of being transferred to a far remote prison. Furthermore, the medical treatment he received was insufficient and suffered, inter alia, from neurological problems which caused him difficulties to control his hands and legs, as well as from urination difficulties and a problem with a knee joint. The State party has repealed the expulsion

	decision of 18 December 2001. However, no decision has been taken yet by the Migration Board and the Chancellor of Justice. On 20 January 2009, the complainant's counsel confirmed that the State party had provided the compensation awarded. On the issue of a residence permit, he states that even if Mr. Agiza were unable to avail immediately of a residence permit the grant of same would be a great psychological relief to both him and his family. Thus, an important part of the reparation of the harm caused to him.
Further action taken/or required	Following the forty-second session, the Committee considered that the State party should be reminded of its obligation to make reparation for the violation of article 3. Serious consideration should be made of the complainant's appeal for a residence permit.
Committee's decision	The Committee considers the dialogue ongoing.
Case	**C.T. and K.M., 279/2005**
Nationality and country of removal if applicable	Rwandan to Rwanda
Views adopted on	17 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The removal of the complainants to Rwanda would amount to a breach of article 3 of the Convention. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	1 March 2007
Date of reply	19 February 2007

State party response	On 29 January 2007, the Migration Board decided to grant the complainants permanent residence permits. They were also granted refugee status and travel documents.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
State party	**SWITZERLAND**
Case	**Mutombo, 13/1993**
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	**Alan, 21/1995**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Aemei, 34/1995**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.

Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran. The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**V.L., 262/2005**
Nationality and country of removal if applicable	Belarusian to Belarus

Views adopted on	20 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	27 February 2007
Date of reply	23 March 2007
State party response	The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
Case	**El Rgeig, 280/2005**
Nationality and country of removal if applicable	Libyan to Libyan Arab Jamahiriya
Views adopted on	15 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party

	to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.
Due date for State party response	26 February 2007
Date of reply	19 January 2007
State party response	On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
Case	**Jean-Patrick Iya, 299/2006**
Nationality and country of removal if applicable	Democratic Republic of the Congo national and deportation to the Democratic Republic of the Congo
Views adopted on	16 November 2007
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Democratic Republic of the Congo would amount to a breach of article 3 of the Convention. The Committee invites the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	28 May 2008
Date of reply	24 June 2008 (it had responded on 19 February 2008)

State party response	On 7 February 2008, the Federal Refugee Office Migration Board granted the complainant "temporary admission" and thus no longer risks removal to the Democratic Republic of the Congo. On 24 June 2008, the State party responded to a request by the Committee to explain what is meant by "temporary admission". It explained that temporary admission is regulated by chapter 11 of the federal law of 16 December 2005 on foreigners which entered into force on 1 January 2008. Under the terms of this law the return of a foreigner to his/her State of origin or to a third State is not lawful if such a return would be contrary to Switzerland's obligations under international law. This status cannot be removed unless there is a radical political change in the country of origin obviating any risk to the person concerned. In the event that such a provision is lifted, the individual would have certain remedies to exhaust under the terms of the same legislation. In addition, this type of status comes to an end if the individual leaves Switzerland definitely, or obtains a residence permit which may be requested after five years of residency in the State party and is based on the individual's level of integration. Under certain conditions, the individual's spouse and children may be able to benefit from family reunification.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
State party	**TUNISIA**
Case	**M'Barek, 60/1996**
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 2004
Issues and violations found	Failure to investigate - articles 12 and 13

Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002
State party response	See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. On 23 February 2009, the State party responded to the information contained in the complainant's letter of 27 November 2008. It informed the Committee that it could not pursue the complainant's request to exhume the body as this matter has already been considered by the authorities and no new information has come to light to justify such a reopening. On the criminal front, the State party reiterated its arguments submitted prior to the Committee's decision that proceedings were opened on three occasions, the last time pursuant to the registration of the communication before the Committee, and each time, as there was insufficient proof, the case was discontinued. On the civil front, the State party reiterated its view that the deceased father pursued a civil action and received compensation for the death of his son following a traffic accident. The reopening of an investigation in which a death by involuntary homicide was declared following a road traffic accident upon which a civil claim had been brought would go against the principle of, "*l'autorité de la chose jugée*".
Complainant's response	On 27 November 2008, the complainant informed the Committee inter alia that an official request to

exhume the deceased's body had been lodged with the judicial authorities but that since May 2008, he had not received any indication as to the status of his request. He encouraged the Rapporteur on Follow-up to Views to pursue the question of implementation of this decision with the State party.

On 3 May 2009, the complainant commented on the State party's submission of 23 November 2009. He states that he was unaware until he read the submission that their request for an exhumation of the body had been rejected. He submits that the State party takes no account of the Committee's decision and the recommendation therein. It is not surprising that the Minister of Justice would arrive at such a conclusion given that he was directly implicated by the Committee in its decision. The complainant submits that the Committee's recommendation in its decision is clear and that an exhumation of the body, followed by a new autopsy in the presence of four international doctors would be a fair response to it. He requests the Committee to declare that the State party has deliberately and illegitimately refused to find out the true cause of death of the deceased and implement the decision, in the same way as it violated articles 12 and 14. He requests fair compensation to the family of the victim (mother and brothers: the father has since died) for the psychological and moral abuse suffered by them as a result.

Consultations with State party

On 13 May 2009, the Rapporteur on follow-up to decisions met with the Ambassador of the Permanent Mission to discuss follow-up to the Committee's decisions. The Rapporteur reminded the Ambassador that the State party has contested the Committee's findings in four out of the five cases against it and has failed to respond to requests for follow-up information in the fifth case, case No. 269/2005, *Ali Ben Salem*.

As to case No. 291/2006, in which the State party has recently requested re-examination, the Rapporteur explained that there is no procedure

	either in the Convention or the rules of procedure for the re-examination of cases. With respect to case No. 60/1996, the Rapporteur informed the State party that the Committee decided during its forty-second session that it would request the State party to exhume the body of the complainant in that case. The Rapporteur reminded the Ambassador that the State party had still not provided a satisfactory response to the Committee's decisions in cases Nos. 188/2001 and 189/2001.
	On each case, the Ambassador reiterated detailed arguments (most of which have been provided by the State party) on why the State disputed the Committee's decisions. In particular, in most cases, such arguments related to the question of admissibility for non-exhaustion of domestic remedies. The Rapporteur indicated that a note verbale would be sent to the State party reiterating inter alia the Committee's position on this admissibility requirement.
Further action taken or required	During the forty-second session, the Committee decided to request the State party to have the complainant's body exhumed.
Committee's decision	The follow-up dialogue is ongoing.
Cases	**Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001**
Nationality and country of removal if applicable	Tunisian
Views adopted on	20 November 2003
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	To conduct an investigation into the complainants' allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

Due date for State party response	23 February 2004
Date of reply	16 March 2004 and 26 April 2006
State party response	See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below. On 26 April 2006, the State party sent a further response. It referred to one of the complainant's (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submitted called into question the real motives of the complainants of all three complaints (187/2001, 188/2001 and 189/2001). It reiterated its previous arguments and submitted that the withdrawal of the complaint corroborated its arguments that the complaint was an abuse of process, that the complainants failed to exhaust domestic remedies, and that the motives of the NGO representing the complainants were not bona fide.
Complainant's response	One of the complainants (189/2001) sent a letter, dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounced his refugee status in Switzerland. On 8 August 2006, the letter from the author of 31 May 2005 was sent to the complainants of case Nos. 187/2001 and 188/2001 for comments. On 12 December 2006, both complainants responded expressing their surprise that the complainant had "withdrawn" his complaint without providing any reasons for doing so. They did not exclude pressure from the Tunisian authorities as a reason for doing so. They insisted that their own complaints were legitimate and encouraged the Committee to pursue their cases under the follow-up procedure. On 12 December 2006, and having received a copy of the complainant's letter of "withdrawal" from

the other complainants, the complainant's representative responded to the complainant's letter of 31 May 2005. The complainant's representative expressed its astonishment at the alleged withdrawal which it puts down to pressure on the complainant and his family and threats from the State party's authorities. This is clear from the manner in which the complaint is withdrawn. This withdrawal does not detract from the facts of the case nor does it free those who tortured the complainant from liability. It regrets the withdrawal and encourages the Committee to continue to consider this case under follow-up.

Consultations with State party

On 25 November 2005, the Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the complainants, Mr. Ltaief Bouabdallah (case No. 189/2001). In this letter, the complainant said that he wanted to "withdraw" his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the complainant had contacted the Embassy in order to be issued with a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special Rapporteur explained that each case would have to be implemented separately and that the Committee had requested that investigations be carried out. The Ambassador asked why the Committee had thought it appropriate to consider the merits when the State party was of the view that domestic remedies had not been exhausted. The Special Rapporteur explained that the Committee had thought the measures referred to by the State party were ineffective, underlined by the fact that there had been no investigations in any of these cases in over 10 years since the allegations.

The Ambassador confirmed that he would convey the

	Committee's concerns and request for investigations, in case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.
Committee's decision	The Committee accepted the complainant's request to "withdraw" his case No. 189/2001 and decided not to examine this case any further under the follow-up procedure.
Case	**Ali Ben Salem, 269/2005**
Nationality and country of removal if applicable	N/A
Views adopted on	7 November 2007
Issues and violations found	Failure to prevent and punish acts of torture, prompt and impartial investigation, right to complain, right to fair and adequate compensation - articles 1, 12, 13 and 14
Remedy recommended	Urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the complainant's treatment to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complaint.
Due date for State party response	26 February 2008
Date of reply	None
State party response	None
Complainant's response	On 3 March 2008, the complainant submitted that since the Committee's decision, he has been subjected again to ill-treatment and harassment by the State party's authorities. On 20 December 2007, he was thrown to the ground and kicked by police, who are in permanent watch outside his home, when he went to greet friends and colleagues who had come to visit him. His injuries were such that he had to be taken to hospital. The next day, several NGOs

	including the World Organization Against Torture (OMCT) (the complainant's representative), condemned the incident. The complainant now remains under surveillance 24 hours a day, thereby depriving him of his freedom of movement and contact with other people. His telephone line is regularly cut and his e-mail addresses are surveyed and systematically destroyed. Except for an appearance before a judge of the instance court on 8 January 2008, during which the complainant was heard on his complaint (filed in 2000) no action has been taken to follow up on the investigation of this case. In addition, the complainant does not see how the proceedings on 8 January relate to the implementation of the Committee's decision. He submits that he is currently in very poor health, that he does not have sufficient money to pay for his medical bills and recalls that the medical expenses for the re-education of victims of torture are considered reparation obligations.
Consultations with State party	See note on the consultations held during the forty-second session with the permanent representative and the Rapporteur on follow-up.
Committee's decision	The Committee considers the follow-up dialogue ongoing. It informed the State party of its disappointment that it had not yet received information on the implementation of its decision. In addition, it expressed its disappointment at the new allegations, inter alia, that the complainant has again been subjected to ill-treatment and harassment by the State party authorities.
Case	**Saadia Ali, 291/2006**
Nationality and country of removal if applicable	N/A
Views adopted on	21 November 2008

Issues and violations found	Torture, prompt and impartial investigation, right to complaint, failure to redress complaint - articles 1, 12, 13 and 14
Interim measures granted and State party response	N/A
Remedy recommended	The Committee urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the acts inflicted on the complainant to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complainant.
Due date for State party response	24 February 2009
Date of reply	26 February 2009
State party response	The State party expressed its astonishment at the Committee's decision given that in the State party's view domestic remedies had not been exhausted. It reiterated the arguments set forth in its submission on admissibility. As to the Committee's view that what were described by the State party as "records" of the preliminary hearing were simply incomplete summaries, the State party acknowledged that the transcripts were disordered and incomplete and provides a full set of transcripts in Arabic for the Committee's consideration. In addition, the State party informed the Committee that on 6 February 2009, the judge "d'instruction" dismissed the complainant's complaint for the following reasons: 1. All of the police allegedly involved denied assaulting the complainant. 2. The complainant could not identify any of her alleged aggressors, except the policeman who is alleged to have pulled her with force prior to her arrest and this would not in any case constitute ill-treatment.

3. All of the witnesses stated that she had not suffered ill-treatment.

4. One of the witnesses stated that she had attempted to bribe him in return for a false statement against the police.

5. Her own brother denied having had any knowledge of the alleged attack and that she displayed no signs of having been assaulted upon her return from the prison.

6. A witness statement from the court clerk confirmed that her bag was returned intact.

7. Contradictions in the complainant's testimony about her medical report - she said the incident had taken place on 22 July 2004 but the certificate stated 23 July 2004.

8. Contradictions in the complainant's testimony to the extent that she stated in her interview with the judge that she had not made a complaint before the Tunisian legal authorities and her subsequent insistence that she made it through her lawyer, who she did not in fact recognize during the hearing.

The State party provided the law upon which this case was dismissed, makes reference to another complaint recently made by the complainant through the OMCT against hospital civil servants, and requests the Committee to *re-examine* this case.

Complainant's response	Awaiting response.
Consultations with State party	See note on the consultations held during the forty-second session with the permanent representative and the Rapporteur on follow-up.
Committee's decision	The dialogue is ongoing.

State party	**VENEZUELA (Bolivarian Republic of)**
Case	**Chipana, 110/1998**
Nationality and country of removal if applicable	Peruvian to Peru
Views adopted on	10 November 1998
Issues and violations found	Complainant's extradition to Peru constituted a violation of article 3.
Interim measures granted and State party response	Granted but not acceded to by the State party.[13]
Remedy recommended	None
Due date for State party response	7 March 1999
Date of reply	9 October 2007 (had previously responded on 13 June 2001, and 9 December 2005)
State party response	On 13 June 2001, the State party had reported on the conditions of detention of the complainant. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison and found her to be in good health. She had been transferred in September 2000 from the top security pavilion to the "medium special security" pavilion, where she had other privileges. On 18 October 2001, the State party had referred to a visit to the complainant on 14 June 2001, during which she stated that her conditions of detention had improved, that she could see her family more often and that she intended to appeal her sentence. She had been

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[13] The Committee stated "Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee."

transferred from the medium special security pavilion to the "medium security" pavilion where she had more privileges. Her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had weekly visits of her family and she was involved in professional and educational activities in the prison.

On 9 December 2005, the State party had informed the Committee that, on 23 November 2005, the Venezuelan Ambassador in Peru had contacted Mrs. Nuñez Chipana. The complainant regretted that the Peruvian authorities had denied her brother access, who had come from Venezuela to visit her. She mentioned that she was receiving medical treatment, that she could receive visits from her son, and that she was placed under a penitentiary regime which imposed minimum restrictions on detainees. She also mentioned that she would request the judgement against her to be quashed and that she was currently making a new application under which she hoped to be acquitted. The State party considered that it had complied with the recommendation that similar violations should be avoided in the future, through the adoption of the law on Refugees in 2001, according to which the newly established National Commission for Refugees now processes all the applications of potential refugees as well as examining cases of deportation. It requested the Committee to declare that it had complied with its recommendations, and to release it from the duty to supervise the complainant's situation in Peru.

On 9 October 2007, the State party responded to the Committee's request for information on the new procedure initiated by the complainant. The State party informed the Committee that Peru has not requested a modification of the terms of the extradition agreement, which would allow it to prosecute the complainant for crimes other than those for which the extradition was granted (offence of disturbing public order and being a member of the subversive movement Sendero Luminoso). It did not

	respond on the status of the new procedure initiated by the complainant.
Complainant's response	None
Committee's decision	The follow-up dialogue is ongoing.

Complaints in which the Committee has found no violations of the Convention up to the forty-second session but in which it requested follow-up information

State party	**GERMANY**
Case	**M.A.K., 214/2002**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.
Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004
State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only

	in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.
Complainant's response	None
Committee's decision	No further action is required.

VII. FUTURE MEETINGS OF THE COMMITTEE

96. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular session for the biennium 2010-2011. Those dates are:

Forty-fourth	26 April-14 May 2010
Forty-fifth	1-19 November 2010
Forty-sixth	25 April-13 May 2011
Forty-seventh	31 October-18 November 2011

97. With reference to the annual reports of the Committee to the General Assembly at its sixty-second session,[14] its sixty-third session, and to chapter II, paragraph 27, of the present report, the Committee notes it will require additional meeting time in 2010 and 2011 to consider the reports presented under the new reporting procedure, i.e. those reports submitted by States parties in response to the lists of issues transmitted prior to the submission of their report. The extension of meeting time and appropriate financial support to enable the Committee to meet for an additional session of four weeks in each of 2010 and 2011, in addition to the two regular three week sessions per year, is an important requirement to addressing the examination of the reports from States parties that have availed themselves of the new procedure.

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[14] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44* (A/62/44), chapter II, paras. 23-24 and *Sixty-third Session, Supplement No. 44* (A/63/44), chapter VII, para. 101.

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

98. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 895th meeting, held on 15 May 2009, the Committee considered and unanimously adopted the report on its activities at the forty-first and forty-second sessions.

Annex I

STATES THAT HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AS AT 15 MAY 2009

Participant	*Signature*	*Ratification, Accession*[a] *Succession*[b]
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	22 September 2006
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993[b]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988

Participant	*Signature*	*Ratification, Accession*[a] *Succession*[b]
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003[a]
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		12 October 1992[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002[a]
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Equatorial Guinea		8 October 2002[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	

Participant	*Signature*	*Ratification, Accession*[a] *Succession*[b]
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002[a]
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998[a]
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Lesotho		12 November 2001[a]
Liberia		22 September 2004[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	13 December 2005
Malawi		11 June 1996[a]
Maldives		20 April 2004[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritania		17 November 2004[a]
Mauritius		9 December 1992[a]
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002[a]
Montenegro		23 October 2006[b]

Participant	*Signature*	*Ratification, Accession[a] Succession[b]*
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	5 July 2005
Niger		5 October 1998[a]
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Pakistan	17 April 2008	
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Rwanda		15 December 2008[a]
Saint Vincent and the Grenadines		1 August 2001[a]
San Marino	18 September 2002	27 November 2006
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Serbia		12 March 2001[b]
Seychelles		5 May 1992[a]

Participant	*Signature*	*Ratification, Accession[a] Succession[b]*
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Swaziland		26 March 2004[a]
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004[a]
Tajikistan		11 January 1995[a]
Thailand		2 October 2007[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Timor-Leste		16 April 2003[a]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Zambia		7 October 1998[a]

Notes

[a] Accession (73 countries).

[b] Succession (7 countries).

Annex II

STATES PARTIES THAT HAVE DECLARED, AT THE TIME OF RATIFICATION OR ACCESSION, THAT THEY DO NOT RECOGNIZE THE COMPETENCE OF THE COMMITTEE PROVIDED FOR BY ARTICLE 20 OF THE CONVENTION, AS AT 15 MAY 2009

Afghanistan
China
Equatorial Guinea
Israel
Kuwait
Mauritania
Poland
Saudi Arabia
Syrian Arab Republic

Annex III

STATES PARTIES THAT HAVE MADE THE DECLARATIONS PROVIDED FOR IN ARTICLES 21 AND 22 OF THE CONVENTION, AS AT 15 MAY 2009[a,b]

State party	*Date of entry into force*
Algeria	12 October 1989
Andorra	22 November 2006
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bolivia	14 February 2006
Bosnia and Herzegovina	4 June 2003
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	13 November 1989
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991[c]
Cyprus	8 April 1993
Czech Republic	3 September 1996[c]
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Georgia	30 June 2005
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	13 September 1989
Iceland	22 November 1996
Ireland	11 May 2002
Italy	10 October 1989
Kazakhstan	21 February 2008
Liechtenstein	2 December 1990

State party	*Date of entry into force*
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Montenegro	23 October 2006[c]
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	28 October 2002
Poland	12 May 1993
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia	12 March 2001[c]
Slovakia	17 March 1995[c]
Slovenia	15 August 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Ukraine	12 September 2003
Uruguay	26 June 1987
Venezuela (Bolivarian Republic of)	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 15 May 2009

Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 15 May 2009[a]

State party	*Date of entry into force*
Azerbaijan	4 February 2002
Brazil	26 June 2006
Burundi	10 June 2003
Guatemala	25 September 2003
Republic of Korea	9 November 2007
Mexico	15 March 2002
Morocco	19 October 2006.
Seychelles	6 August 2001

Notes

[a] A total of 60 States parties have made the declaration under article 21.

[b] A total of 64 States parties have made the declaration under article 22.

[c] States parties that have made the declaration under articles 21 and 22 by succession.

Annex IV

MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE IN 2009

Name of member	*Country of nationality*	*Term expires on 31 December*
Ms. Essadia BELMIR (vice-chairperson)	Morocco	2009
Ms. Felice GAER	United States of America	2011
Mr. Luis GALLEGOS CHIRIBOGA (vice-chairperson)	Ecuador	2011
Mr. Abdoulaye GAYE	Senegal	2011
Mr. Claudio GROSSMAN (chairperson)	Chile	2011
Ms. Myrna KLEOPAS (rapporteur)	Cyprus	2011
Mr. Alexander KOVALEV	Russian Federation	2009
Mr. Fernando MARIÑO	Spain	2009
Ms. Nora SVEAASS (vice-chairperson)	Norway	2009
Mr. Xuexian WANG	China	2009

Annex V

STATES PARTIES TO THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AS OF 31 MARCH 2009

Participant	*Signature, Succession to signature*[b]	*Ratification Accession,*[a] *Succession*[b]
Albania		1 October 2003[a]
Argentina	30 April 2003	15 November 2004
Armenia		14 September 2006[a]
Austria	25 September 2003	
Azerbaijan	15 September 2005	28 January 2009
Belgium	24 October 2005	
Benin	24 February 2005	20 September 2006
Bolivia	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 December 2007	24 October 2008
Brazil	13 October 2003	12 January 2007
Burkina Faso	21 September 2005	
Cambodia	14 September 2005	30 March 2007
Chile	6 June 2005	12 December 2008
Congo	29 September 2008	
Costa Rica	4 February 2003	1 December 2005
Croatia	23 September 2003	25 April 2005
Cyprus	26 July 2004	
Czech Republic	13 September 2004	10 July 2006
Denmark	26 June 2003	25 June 2004
Ecuador	24 May 2007	
Estonia	21 September 2004	18 December 2006
Finland	23 September 2003	
France	16 September 2005	11 November 2008
Gabon	15 December 2004	
Georgia		9 Aug. 2005[a]
Germany	20 September 2006	4 December 2008
Ghana	6 November 2006	
Guatemala	25 September 2003	9 June 2008
Guinea	16 September 2005	

Participant	*Signature, Succession to signature*[b]	*Ratification Accession,*[a] *Succession*[b]
Honduras	8 December 2004	23 May 2006
Iceland	24 September 2003	
Ireland	2 October 2007	
Italy	20 August 2003	
Kazakhstan	25 September 2007	22 October 2008
Kyrgyzstan		29 December 2008
Lebanon		22 December 2008[a]
Liberia		22 September 2004[a]
Liechtenstein	24 June 2005	3 November 2006
Luxembourg	13 January 2005	
Madagascar	24 September 2003	
Maldives	14 September 2005	15 February 2006
Mali	19 January 2004	12 May 2005
Malta	24 September 2003	24 September 2003
Mauritius		21 June 2005[a]
Mexico	23 September 2003	11 April 2005
Montenegro	23 October 2006[b]	6 March 2009
Netherlands	3 June 2005	
New Zealand	23 September 2003	14 March 2007
Nicaragua	14 March 2007	25 February 2009
Norway	24 September 2003	
Paraguay	22 September 2004	2 December 2005
Peru		14 September 2006[a]
Poland	5 April 2004	14 September 2005
Portugal	15 February 2006	
Republic of Moldova	16 September 2005	24 July 2006
Romania	24 September 2003	
Senegal	4 February 2003	18 October 2006
Serbia	25 September 2003	26 September 2006
Sierra Leone	26 September 2003	
Slovenia		23 January 2007[a]
South Africa	20 September 2006	

Participant	*Signature, Succession to signature*[b]	*Ratification Accession,*[a] *Succession*[b]
Spain	13 April 2005	4 April 2006
Sweden	26 June 2003	14 September 2005
Switzerland	25 June 2004	
The former Yugoslav Republic of Macedonia	1 September 2006	13 February 2009
Timor-Leste	16 September 2005	
Togo	15 September 2005	
Turkey	14 September 2005	
Ukraine	23 September 2005	19 September 2006
United Kingdom of Great Britain and Northern Ireland	26 June 2003	10 December 2003
Uruguay	12 January 2004	8 December 2005

Note: 25 States are signatories but are not yet States parties to the Optional Protocol.

Annex VI

MEMBERSHIP OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN 2009

Name of member	*Country of nationality*	*Term expires on 31 December*
Ms. Silvia CASALE	United Kingdom of Great Britain and Northern Ireland	2012
Mr. Mario Luis CORIOLANO	Argentina	2012
Ms. Marija DEFINIS GOJANOVIĆ	Croatia	2010
Mr. Zdeněk HÁJEK	Czech Republic	2012
Mr. Zbigniew LASOCIK	Poland	2012
Mr. Hans Draminsky PETERSEN	Denmark	2010
Mr. Víctor Manuel RODRÍGUEZ RESCIA	Costa Rica	2012
Mr. Miguel SARRE IGUINIZ	Mexico	2010
Mr. Wilder TAYLER SOUTO	Uruguay	2010
Mr. Leopoldo TORRES BOURSAULT	Spain	2010

Note: Mr. Rodriguez-Rescia is the current President of the Subcommittee of Prevention of Torture, with Messrs. Coroliano and Petersen as Vice-Presidents, as from February 2009. From February 2007 to February 2009, Ms. Casale was President of the SPT, with Messrs. Petersen and Rodriguez-Rescia as Vice-Presidents.

Annex VII

SECOND ANNUAL REPORT OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT[*]

(April 2008 to March 2009)

Contents

		Paragraphs	Page
I.	Introduction	1–5	234
II.	Mandate of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	6–13	235
	A. Objectives of the Optional Protocol to the Convention against Torture	6	235
	B. Key features of the mandate of the Subcommittee on Prevention of Torture	7–8	235
	C. Powers of the Subcommittee on Prevention of Torture under the Optional Protocol	9–11	236
	D. The preventive approach	12–13	236
III.	Visiting places of deprivation of liberty	14–32	237
	A. Planning the work of the Subcommittee on Prevention of Torture in the field	14–19	237
	B. Visits carried out from April 2008 through March 2009	20–27	238
	C. Publication of the visit reports of the Subcommittee on Prevention of Torture	28–29	240
	D. Issues arising from the visits	30–32	240
IV.	National preventive mechanisms	33–42	241
	A. Work of the Subcommittee on Prevention of Torture related to national preventive mechanisms	33–39	241
	B. Questions concerning national preventive mechanisms	40–42	243
V.	Cooperation with other bodies	43–61	243
	A. Relations with relevant United Nations bodies	43–50	243
	B. Relations with other relevant international organizations	51–56	245
	C. Relations with civil society	57–61	246
VI.	Administrative and budgetary matters	62–76	247
	A. Resources in 2008-2009	62–63	247
	B. Secretariat of the Subcommittee on Prevention of Torture	64–68	247

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[*] The report complete with the annexes has been issued separately under symbol number CAT/C/42/2 and Corr.1. All annexes have been reproduced as appendices to the present annex, except I and II which correspond to annexes V and VI of the present report.

C. Budgetary requirements 69–74 248

D. Proposals for change 75–76 250

VII. Organizational activities 77–81 250

A. Plenary sessions of the Subcommittee on Prevention of Torture 77–78 250

B. Development of working methods 79–80 250

C. Confidentiality and secure communications 81 251

Appendices

I. Visits carried out in 2008-2009 252

II. Programme of work of the Subcommittee on Prevention of Torture in the field for 2009 256

III. Participation of the members of the Subcommittee on Prevention of Torture in Optional Protocol-related activities 257

IV. Optional Protocol Contact Group 259

V. Analysis of the Istanbul Protocol 260

I. INTRODUCTION

1. This public document is the second annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Subcommittee on Prevention of Torture").[1] It gives an account of the work of the Subcommittee during the period from the beginning of April 2008 to the end of March 2009.[2]

2. As at 31 March 2009, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had 46 States parties and a further 25 signatories.[3] A number of other States are far advanced in the process of ratification and the Subcommittee looks forward to the time when there will be 50 States parties and the number of Subcommittee members will increase to 25.

3. The original membership of 10 experts, elected by States parties as independent members of the Subcommittee on the Prevention of Torture in October 2006, stayed the same following elections in October 2008 for the seats of the five members whose terms of office expired after two years.[4] The members of this new generation of United Nations treaty bodies remain firmly committed to preventing torture and other cruel, inhuman or degrading treatment or punishment through the three pillars of the Subcommittee mandate:

- Visits to places of deprivation of liberty
- Direct work with national preventive mechanisms
- Cooperation with other United Nations bodies, other international bodies at the global and regional levels, and national bodies working in related areas

4. Article 25 of the Optional Protocol states that the "expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations" and that the "Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol." During its second year the Subcommittee on Prevention of Torture has continued to struggle to fulfil the mandate due to factors seriously inhibiting its capacity to do so:

- Budgetary resources limiting preventive visits to three or four per year, meaning that the Subcommittee would visit a State party once every 12 to 15 years
- No budget provision at all for direct work with national preventive mechanisms, although this is the uniquely important new feature of the Optional Protocol

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[1] Established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For the text of the Optional Protocol, see www2.ohchr.org/english/law/cat-one.htm.

[2] In accordance with the Optional Protocol (art. 16, para. 3), the Subcommittee presents its public annual report to the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

[3] A list of States parties to the Optional Protocol is contained in annex V of the present report.

[4] A list of Subcommittee members is contained in annex VI to the present report.

- Lack of staff and lack of staff continuity to support this specialized work, resulting in the Subcommittee working with 12 different individual staff members on the six visits carried out to date

5. The Subcommittee regrets to have to report that, for as long as the current support situation remains unchanged, it will not be able to discharge its duties fully under the mandate.

II. MANDATE OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

A. Objectives of the Optional Protocol to the Convention against Torture

6. Article 1 of the Optional Protocol provides for a system of regular visits by mechanisms at the international and national level to prevent torture or other cruel, inhuman or degrading treatment or punishment. The Subcommittee on Prevention of Torture conceives this system as an interlocking network of mechanisms carrying out visits and other related functions under their preventive mandates in cooperation with each other. Good relations and communications between the visiting bodies working at different levels need to be developed and maintained in order to avoid duplication and to use scarce resources to best effect. The Subcommittee has a mandate to engage directly with other visiting mechanisms, both at the international and national levels. During the reporting period it has continued to seek ways to promote synergy among those working in the field of prevention.

B. Key features of the mandate of the Subcommittee on Prevention of Torture

7. The mandate of the Subcommittee is set out in the Optional Protocol in article 11.[5] This establishes that the Subcommittee shall:

(a) Visit places where people are or may be deprived of liberty;

(b) In regard to national preventive mechanisms (NPM):

(i) Advise and assist States parties, when necessary, in their establishment;

(ii) Maintain direct contact with NPMs and offer them training and technical assistance; advise and assist NPMs in evaluating the needs and necessary means to improve safeguards against ill-treatment; and make necessary recommendations and observations to States parties with a view to strengthening the capacity and mandate of NPMs;

(c) Cooperate with relevant United Nations bodies as well as with international, regional and national bodies for the prevention of ill-treatment.

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[5] Part III "Mandate of the Subcommittee on Prevention".

8. The Subcommittee considers the three elements of its mandate as essential for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

C. Powers of the Subcommittee on Prevention of Torture under the Optional Protocol

9. In order for the Subcommittee to fulfil its mandate, it is granted considerable powers under the Optional Protocol (art. 14). Each State party is obliged to allow visits by the Subcommittee to any places under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.[6]

10. States parties further undertake to grant the Subcommittee on Prevention of Torture unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons, as well as their conditions of detention.[7] They are also obliged to grant the Subcommittee private interviews with persons deprived of liberty without witnesses.[8] The Subcommittee has the liberty to choose the places it wishes to visit and the persons it wishes to interview.[9] Similar powers are to be granted to NPMs, in accordance with the Optional Protocol.[10]

11. During the reporting period the Subcommittee has continued to exercise these powers successfully with the cooperation of the States parties visited.

D. The preventive approach

12. The scope of the Subcommittee's preventive mandate is large, encompassing many factors relating to the situation obtaining in a country as regards the treatment or punishment of people deprived of their liberty. Such factors include: any relevant aspect of, or gaps in, primary or secondary legislation and rules or regulations in force; any relevant elements of, or gaps in, the institutional framework or official systems in place; and any relevant practices or behaviours which constitute or which, if left unchecked, could degenerate into, torture or other cruel, inhuman or degrading treatment or punishment. The Subcommittee subjects to scrutiny any and all such factors which may conduce to torture or other cruel, inhuman or degrading treatment or punishment.

13. Whether or not torture or other cruel, inhuman or degrading treatment or punishment occurs in practice in a State, there is always a need for every State to be vigilant in order to guard against the risk of such occurrence and to put in place and maintain effective and comprehensive safeguards to protect people deprived of their liberty. It is the role of preventive mechanisms to ensure that such safeguards are actually in place and operating effectively and to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of people deprived of their liberty. The Subcommittee's preventive approach is forward looking. In examining examples of

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[6] Optional Protocol, arts. 4 and 12 (a).

[7] Ibid., arts. 12 (b) and 14, para. 1 (a) and (b).

[8] Ibid., art. 14, para. 1 (d).

[9] Ibid., art. 14, para. 1 (e).

[10] Ibid., arts. 19 and 20.

both good and bad practice, the Subcommittee seeks to build upon existing protections, to close the gap between theory and practice and to eliminate, or reduce to a minimum, the possibilities for torture and other cruel, inhuman or degrading treatment or punishment.

III. VISITING PLACES OF DEPRIVATION OF LIBERTY

A. Planning the work of the Subcommittee on Prevention of Torture in the field

14. During its second year of operation, the Subcommittee on Prevention of Torture continued to select the States to be visited by a reasoned process, with reference to the principles indicated in article 2 of the Optional Protocol. Among the factors that may be taken into consideration in the choice of countries to be visited by the Subcommittee are date of ratification/development of NPMs, geographic distribution, size and complexity of State, regional preventive monitoring in operation, and specific or urgent issues reported.

15. The Subcommittee has found it necessary to limit its planned programme of visits to three visits per year because of budgetary constraints. The Subcommittee wishes to state categorically that it does not consider this periodicity of regular visits adequate to fulfil its mandate under the Optional Protocol.

16. In early 2008, it became apparent, when costings for the visits were provided, that there would be insufficient funding to support even the reduced programme of visits, i.e. two Subcommittee visits in the second half of 2008. The Subcommittee on Prevention of Torture decided that, rather than undertake both planned visits in a superficial manner, it would proceed to carry out the first of the two scheduled visits with an allocation of time and human resources more appropriate to the work as planned. This inevitably led to the postponement of the remaining visit planned for 2008 until early 2009.

17. In the course of 2008, the Subcommittee on Prevention of Torture continued to develop its approach to the strategic planning of its visit programme in relation to the existing number of States parties. The Subcommittee takes the view that, after the initial period of Subcommittee development, the visits programme in the medium term should involve 10 visits per 12-month period. This annual rate of visits is based on the conclusion that, to visit the 46 States parties effectively in order to prevent ill-treatment, the Subcommittee would have to visit each State party at least once every four/five years on average. In the Subcommittee's view, less frequent visits could jeopardize effective support to and reinforcement of NPMs in the fulfilment of their role and the protection afforded to persons deprived of liberty.

18. Four additional ratifications or accessions will bring the total States parties to 50, with a concomitant requirement for an increase in budgetary resources and an increase in Subcommittee membership to 25.[11] With 46 State parties to the Optional Protocol and a further 25 States that are signatories and the process of ratification well underway in some cases, the Subcommittee trusts that

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[11] In accordance with article 5, paragraph 1 of the Optional Protocol.

plans for provision for that contingency are in hand. To that end, the Subcommittee has prepared for the Office of the High Commissioner for Human Rights (OHCHR) detailed justified budgetary calculations for its future work (see section VI below).

19. As part of the planning process, the Subcommittee requests information from the State party to be visited concerning the legislation and institutional and system features related to deprivation of liberty, as well as statistical and other information concerning their operation in practice. The Subcommittee is grateful to the two interns, each working for a six-month period, who prepared the country briefs concerning the States parties to be visited in the period covered by the present report. The country briefs contain a wealth of up-to-date, relevant information, presented in an analytical framework devised by the Subcommittee and draw on materials from other United Nations bodies, other international treaty bodies, national human rights institutions, non-governmental organizations and individual communications.

B. Visits carried out from April 2008 through March 2009

20. The Subcommittee on Prevention of Torture carried out visits to Benin in May 2008, to Mexico in August/September 2008 and to Paraguay in March 2009. During these visits, the delegations focused on the development process of the national preventive mechanisms and on the situation as far as protection of people held in various types of places of deprivation of liberty is concerned.[12]

21. In early 2009, the Subcommittee on Prevention of Torture announced its forthcoming programme of work in the field for the year, including visits to Paraguay, Honduras and Cambodia and in-country engagement in Estonia. The Subcommittee also carried out preliminary missions shortly before the planned regular visits to Mexico and Paraguay to initiate the process of dialogue with the authorities. The preliminary meetings proved to be an important part of preparation for the visits, representing an opportunity to fine-tune the programme and enhance facilitation of the work of the delegation. Preliminary missions form an integral part of the work involved in Subcommittee visits.

22. During visits, Subcommittee delegations have engaged in empirical fact-finding and discussions with a wide range of interlocutors, including officials of the ministries concerned with deprivation of liberty and with other government institutions, other State authorities such as judicial or prosecutorial authorities, relevant national human rights institutions, professional bodies and representatives of civil society. If the national preventive mechanisms are already in existence, they are important interlocutors for the Subcommittee. The Subcommittee delegations have carried out unannounced visits to places of deprivation of liberty and have had interviews in private with persons deprived of their liberty. They also engaged in discussions with staff working in custodial settings and, in the case of the police, also with those working in the investigation process.

23. Among its principal methods for fact-finding on visits, the Subcommittee on Prevention of Torture uses the triangulation of information gathered independently from a variety of sources, including direct observation, interviews, medical examination and perusal of documentation, in order

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[12] For details of the places visited, see appendix I.

to arrive at a view of the particular situation under scrutiny as regards the risk of torture or other cruel, inhuman or degrading treatment or punishment and as regards the presence or absence, strength or weakness of safeguards. Subcommittee delegations draw conclusions on the basis of its cross-checked findings made during visits.

24. During the year the Subcommittee on Prevention of Torture noted with satisfaction that some States parties plan to or are in the process of implementing the Istanbul Protocol as a tool to document torture, first of all in the fight against impunity. The Subcommittee has analysed the usefulness of the Istanbul Protocol, not only in the fight against impunity, but also in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, and has identified some challenges. The analysis appears in appendix V. Considering the validity and usefulness of the Istanbul Protocol as a soft-law instrument, the Subcommittee is of the view that States should promote, disseminate and implement the Protocol as a legal instrument to document torture cases of people deprived of their liberty through medical and psychological reports drafted under adequate technical standards. These reports can not only constitute important evidence in torture cases but, most importantly, they can contribute to the prevention of cruel, inhuman and degrading treatment. The Subcommittee on Prevention of Torture notes that it is crucial that doctors and other health professionals be effectively independent from police and penitentiary institutions, both in their structure - human and financial resources - and function - appointment, promotion and remuneration.

25. At the end of each regular Subcommittee visit, the delegation presented its preliminary observations to the authorities orally in a confidential final meeting. The Subcommittee on Prevention of Torture wishes to thank the authorities of Benin, Mexico and Paraguay for the spirit in which the initial observations of its delegations were received and the constructive discussions ensuing about ways forward. After each visit the Subcommittee wrote to the authorities, reiterating key preliminary observations and requesting feedback and updated information on any steps taken or being planned since the visit to address the issues raised during the final meeting, in particular on certain issues which could be or were due to be addressed in the weeks following the visit. The Subcommittee indicated that responses communicated by the authorities would be considered in the drafting of the visit report.

26. The authorities were also reminded, later in the period after the visit, that any responses received by the Subcommittee before adoption of the draft visit report in plenary session would form part of the Subcommittee's deliberations when considering adoption. These communications form an important part of the ongoing preventive dialogue between the State party and the Subcommittee. It is gratified to report that on each of the visits carried out to date, it has received feedback from authorities concerning the preliminary observations and further information prior to the adoption of each visit report. This is an indication that the States parties initially visited have embraced the ongoing process of dialogue and incremental progress on prevention.

27. The authorities are asked to respond in writing to the recommendations and to the requests for further information in the Subcommittee's report on the visit to that State, as transmitted to them in confidence after adoption by the Subcommittee. Thus far all the responses of the authorities

concerned have arrived on time - a clear signal of the goodwill of States parties to cooperate with the Subcommittee.

C. Publication of the visit reports of the Subcommittee on Prevention of Torture

28. As of 31 March 2009, the Subcommittee visit reports on Sweden and the Maldives, (two out of the five States parties to have received a Subcommittee visit report) and the authorities' responses are in the public domain.[13] The Subcommittee on Prevention of Torture hopes that in due course the authorities of every State party visited will request that the visit report and the authorities' response to it be published.[14] Until such time the visit reports remain confidential.

29. Publication of a Subcommittee visit report and the response from the authorities concerned is a sign of the commitment of the State party to the objectives of the Optional Protocol. It enables civil society to consider the issues addressed in the report and to work with the authorities on implementation of the recommendations to improve the protection of people deprived of their liberty. The Subcommittee on Prevention of Torture warmly welcomes the decision to publish taken by the authorities of Sweden and the Maldives. It hopes that other States parties will follow this excellent example.

D. Issues arising from the visits

30. The Optional Protocol provides that the Subcommittee members may be accompanied on visits by experts of demonstrated professional experience and knowledge to be selected from a roster prepared on the basis of proposals made by the States parties, OHCHR and the United Nations Centre for International Crime Prevention.[15] To date 22 States parties have provided names and details of experts for the roster. In 2008 the United Nations set up a panel to select names to be placed on the roster in addition to the experts proposed by States parties. External experts can contribute to the work of the Subcommittee by providing a diversity of perspectives and professional expertise to complement those of Subcommittee members. The Subcommittee hopes that experts from all regions of the world will be included in the roster. The Subcommittee still awaits the roster of experts and, in its absence, continues to select experts from the list of names proposed by States parties and from among experts widely recognized as having the required relevant expertise. During the period covered by the present report, the Subcommittee was accompanied on one visit by only one expert, owing to budgetary constraints.

31. The Subcommittee has concerns about the possibility of reprisals after its visits. People deprived of their liberty with whom the Subcommittee delegation has spoken may be threatened if they do not reveal the content of these contacts or punished for having spoken with the delegation. In addition, the Subcommittee has been made aware that some people deprived of their liberty may have been warned in advance not to say anything to the Subcommittee delegation. It should be self-evident that conduct

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[13] See http://www.ohchr.org/english/bodies/cat/opcat/index.htm.

[14] In accordance with article 16, paragraph 2 of the Optional Protocol.

[15] Art. 13, para. 3.

of this kind on the part of any official or person acting for the State would be a breach of the obligation to cooperate with the Subcommittee as provided in the Optional Protocol. Moreover, article 15 of the Optional Protocol lays a positive obligation upon the State to take action to ensure that there are no reprisals as a consequence of a Subcommittee visit.

32. The Subcommittee on Prevention of Torture expects the authorities of each State visited to verify whether reprisals for cooperating with the Subcommittee have occurred and to take urgent action to protect all persons concerned.

IV. NATIONAL PREVENTIVE MECHANISMS

A. Work of the Subcommittee on Prevention of Torture related to national preventive mechanisms

33. The Optional Protocol requires each State party to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment - national preventive mechanisms (NPMs).[16] The Optional Protocol sets a time limit for this provision no later than one year from ratification. Most States parties have not met this obligation.

34. During its second year the Subcommittee on Prevention of Torture again made contact with all States parties who were due to establish or maintain NPMs in order to encourage them to communicate with the Subcommittee about the ongoing process of developing NPMs. States parties to the Optional Protocol were requested to send detailed information concerning the establishment of NPMs (legal mandate, composition, size, expertise, financial resources at their disposal, frequency of visits, etc.).[17] By 31 March 2009, 29 States parties had provided information on all or some of these matters.[18]

35. The Subcommittee notes with concern the lack of progress to date towards the designation, establishment or maintenance of NPMs in many States parties. There are noticeable gaps as regards the required process of consultation for the establishment of NPMs, the necessary legislative foundation and the practical provision, including human and budgetary resources, to enable the NPMs to work effectively. Unless the NPMs are able to fulfil their role as the on-the-spot visiting mechanisms for the prevention of ill-treatment, the work of the Subcommittee will be seriously and adversely affected.

36. During the course of the year, the Subcommittee had various bilateral and multilateral contacts with NPMs and with organizations, including national human rights institutions (NHRIs) and non-governmental organizations (NGOs) involved in the development of NPMs in all the regions falling under the mandate. The Subcommittee salutes the work of the member organizations of the

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[16] Art. 17.

[17] Having regard to the elements identified in articles 3, 4, 11, and 12 of the Optional Protocol.

[18] The official information communicated to the Subcommittee concerning designation, establishment or maintenance of NPMs by all States parties as of 31 March 2009 is available in the Subcommittee's website: http://www.ohchr.org/english/bodies/cat/opcat/index.htm.

Optional Protocol Contact Group (OCG),[19] in partnership with regional bodies such as the African Commission on Human and People's Rights, the Council of Europe, the Inter-American Commission on Human Rights and the OSCE/ODIHR and the Commission of the European Union in organizing gatherings around the world to promote and assist in the implementation of the Optional Protocol.

37. In response to requests from some NPMs for assistance, the Subcommittee on Prevention of Torture is in the process of exploring ways to develop a pilot programme for assistance to NPMs, based on a combination of workshops and observation of NPM visits in action, with subsequent feedback and exchange of views. The workshop model arose from a meeting with a representative of the Estonian NPM during the fifth plenary session of the Subcommittee. It is being piloted in 2009, as part of a programme supported by the Council of Europe and organized by the Association for the Prevention of Torture (APT). The Subcommittee is pursuing such avenues of support in order to fulfil its mandate under the Optional Protocol in the context of a continuing absence of any United Nations budgetary provision for this part of the Subcommittee's work (see section VI below).

38. In the course of the visits during the reporting period, Subcommittee delegations met with representatives of the bodies designated to act as NPMs in some of the countries visited. In Benin, the draft legislation on the NPM was examined and welcomed; the NPM was not yet in existence and the Subcommittee awaits progress in this regard. In Mexico, the NPM was the subject of a series of discussions, including issues such as the legislation regarding the mandate and scope of the work programme in the context of the complex federal system and resources. In Paraguay, the Subcommittee noted with appreciation that the process of development of the draft law establishing the NPM had been characterized by openness, transparency and inclusivity. Furthermore, the content of the draft law meets the minimum requirements of the Optional Protocol, including as to the functional independence of the NPM. The Subcommittee is concerned that the draft law has for months been under consideration by the Senate's commission on legislation and trusts that the impetus for the adoption of the law will be renewed in the weeks following the Subcommittee's visit.

39. Members of the Subcommittee on Prevention of Torture were also involved in a number of meetings[20] at the national, regional and international level, concerning the development of NPMs. The Subcommittee members consider this part of their mandate so crucial that they have made every effort to be involved through self-funding and/or with generous support, including financial, from the OCG. This association of organizations involved in work related to the implementation of the Optional Protocol provided the Subcommittee with significant help by sponsoring the participation of its members in a range of important gatherings of key interlocutors and by assisting it in its programme of developing working methods (see section V, below). The Subcommittee wishes to place on record its gratitude for the continuing vital support of the OCG, in particular in relation to the Subcommittee's work concerning NPMs.

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[19] The organizations involved in the Optional Protocol Contact Group are indicated in appendix IV.

[20] For a list of activities related to NPMs in which Subcommittee members participated, see appendix III.

B. Questions concerning national preventive mechanisms

40. During the early phase of the operation of the Optional Protocol, the Subcommittee on Prevention of Torture produced preliminary guidelines concerning the development of NPMs (published in the Subcommittee's first annual report (A/63/44, annex VII)). These focused on the initial stage of the process, when States parties began to fulfil their obligation under the Optional Protocol to designate, establish or maintain NPMs. Many States parties are still at this initial stage in relation to the development of their NPMs.

41. The Subcommittee has been turning its focus to key questions about the functioning of NPMs in order to inform its approach to implementing its tasks in relation to NPMs, starting from the framework in article 11 of the Optional Protocol: (a) advising and assisting States parties in establishing NPMs; (b) offering NPMs training and technical assistance with a view to strengthening their capacities; (c) advising and assisting NPMs in evaluating the needs and the means necessary to strengthen the protection of people deprived of their liberty; and (d) making recommendations and observations to States parties with a view to strengthening the mandate and capacity of NPMs to prevent ill-treatment.

42. At this early stage of building confidence and developing relations, the Subcommittee on Prevention of Torture intends to proceed empirically, supporting NPMs and being constructively critical in its cooperation with NPMs, as with States parties. Through its work in "direct contact" with NPMs, as stipulated in the Optional Protocol, the Subcommittee seeks to consider what NPMs need in order to improve their functioning in practice as a key part of an effective preventive visiting system. Under article 16, the Subcommittee shall communicate its recommendations and observations confidentially to the State party and, if relevant, to the national preventive mechanisms. The Subcommittee considers that most, if not all, of its recommendations and observations would be relevant to national preventive mechanisms. The Subcommittee is keen to continue and intensify its direct contact with NPMs and looks forward to being in a position to devote more resources to this important part of its mandate (see section VI below).

V. COOPERATION WITH OTHER BODIES

A. Relations with relevant United Nations bodies

43. The Optional Protocol establishes a special relationship between the Committee against Torture and the Subcommittee on Prevention of Torture and provides that both organs shall hold simultaneous sessions at least once a year.[21] The sixth session of the Subcommittee was held simultaneously with part of the forty-first session of the Committee against Torture, and the second joint meeting took place on 18 November 2008. The discussion included the following issues: implementation of the Optional Protocol through ratifications; NPMs; country visits and their timetabling; cooperation between the Committee and the Subcommittee and sharing of information between the two bodies; public annual report of the Subcommittee.

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[21] Art. 10, para. 3.

44. The Committee/Subcommittee contact group, consisting of two members from each treaty body, continued to facilitate communications. The Association for the Prevention of Torture (APT) supported these contacts by providing funding for a meeting, including the chairpersons of the two treaty bodies, before the November joint meeting. This enabled the participants to exchange views on a number of issues of importance to both bodies, including ways of coordinated working. The Subcommittee on Prevention of Torture greatly appreciates the support of the Committee against Torture in presenting the Subcommittee public annual report to the General Assembly together with the Committee's annual report.

45. In November 2008 the General Assembly decided that the chairpersons of the Committee and Subcommittee would make presentations to the General Assembly in October 2009 concerning their work in relation to torture with interactive discussions. The Subcommittee on Prevention of Torture warmly welcomes this opportunity to engage with the General Assembly on matters relating to its mandate.

46. The Special Fund to provide assistance to States parties in implementing the recommendations of the Subcommittee on Prevention of Torture and to assist the education of NPMs (under article 26 of the Optional Protocol) is being administered by OHCHR. The Subcommittee suggested that an independent board of experts should be involved in reviewing applications to the Special Fund. The Subcommittee has always been firmly of the opinion that the Subcommittee needs to maintain an arms length relationship with the Fund in order to distinguish its role as an independent preventive mechanism from the funding of implementation of its recommendations. It was therefore pleased to learn that the experts on the Board of Trustees of the Voluntary Fund for the Victims of Torture (VFVT) have been approached to act as an independent advisory board to assess how contributions to the Special Fund might be used.

47. The Subcommittee on Prevention of Torture understands that thus far there have been generous contributions to the Special Fund from the Maldives and Spain. It is reported that in general States have been reluctant to contribute to the Special Fund until they know what the Subcommittee's recommendations are. The Subcommittee recalls that its recommendations are confidential until the State party concerned agrees to publication of the visit report. Publication is therefore an important step in the process of obtaining funding for the implementation of recommendations.

48. During its plenary sessions, the Subcommittee members discussed relations and attended meetings with other relevant United Nations bodies. In particular, given the complementarity of the Subcommittee's work and that of the Special Rapporteur on the question of torture, Manfred Nowak, the Subcommittee has continued to maintain close contact with the Special Rapporteur and has discussed common challenges faced and methods of working.

49. During its seventh plenary session in February 2009, the Subcommittee on Prevention of Torture met with the Gianni Magazzeni from the OHCHR Field Operations and Technical Cooperation Division of the National Institutions Unit to discuss accreditation of the national human rights institutions (NHRI). Whereas the accreditation process is clearly seen as of value to/by NHRIs, the Subcommittee on Prevention of Torture takes the view that it is important to distinguish between the

general human rights mandate of NHRIs and the specific preventive mandate of NPMs. Accreditation does not automatically qualify an NHRI as an NPM. In the meeting, ways were explored to make clear the distinction between NHRIs accreditation and suitability of a particular NHRI for the role of NPM.

50. The Subcommittee of Prevention of Torture continues to be represented at the Inter-Committee meetings of the United Nations human rights treaty bodies, which are a good opportunity to exchange views with experts whose mandates intersect substantively with the Subcommittee mandate. There are points of common interest among the treaty bodies. The Subcommittee's work relates in particular to the mandate of the Committee and the Human Rights Committee, with respect to the rights of persons deprived of liberty, and likewise to the work of the Committee on the Rights of the Child, which includes the rights of children deprived of liberty, and to that of the Committee on the Elimination of Discrimination against Women, as regards the rights of women deprived of liberty. The Subcommittee has had occasion to cite the Committee against Torture, the Human Rights Committee and the Committee on the Rights of the Child in its visit reports.

B. Relations with other relevant international organizations

51. The Subcommittee on Prevention of Torture also maintained contact with the International Committee of the Red Cross and the two bodies continued to maintain a positive dialogue on the many related areas of their work.

52. The Optional Protocol provides that the Subcommittee shall consult with bodies established under regional conventions with a view to cooperating with them and avoiding duplication, in order to promote effectively the objectives of the Optional Protocol to prevent torture and other forms of ill-treatment.[22]

53. During the reporting period, the Subcommittee has maintained close contacts with the Inter-American Commission on Human Rights (IACHR), with the two bodies working on guidelines for coordination. The Executive Secretary of IACHR was invited to a working group meeting with the Subcommittee on Prevention of Torture in Geneva and one of the Subcommittee members participated, on behalf of the Subcommittee, in a public hearing and plenary session of the IACHR in Washington concerning prevention of torture in Latin America. These meetings proved fruitful opportunities for exchanges focused on the work of each body and current developments relating to national preventive mechanisms.

54. The Subcommittee on Prevention of Torture likewise continued to have close contact with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Members of the Subcommittee met with the Bureau and Executive Secretary of the CPT in the context of each of the triannual plenary sessions of the CPT in Strasbourg (France). In addition, the Secretary to the Subcommittee met with the Executive Secretary and other members of the CPT Secretariat in Strasbourg from 21 to 22 July 2008. These were important occasions on which to exchange ideas and information. The Subcommittee on Prevention of Torture and the CPT are

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[22] Arts. 11 (c) and 31.

planning to be involved in a series of training/capacity building activities in the field designed to assist in the development of NPMs. The programme is under the auspices of the Council of Europe and implemented by the APT.

55. The Subcommittee on Prevention of Torture and both regional international bodies are concerned to ensure that duplication of the programme of preventive work being carried out regionally is avoided and to optimize the impact of the system of preventive visiting in their common States parties.

56. The Subcommittee on Prevention of Torture also continued its close contacts with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) at several regional meetings, as well as participating in seminars in Kyrgyzstan and Serbia in early 2009.

C. Relations with civil society

57. During the reporting period, the Subcommittee on Prevention of Torture worked in close contact with international and national non-governmental organizations[23] engaged in strengthening the protection of all persons against torture.

58. The Subcommittee has had regular meetings with APT in Geneva. This international NGO has been a constant source of support and advice to the Subcommittee, both during the Subcommittee plenary sessions and over the whole of the period covered by the annual report. The Subcommittee is particularly grateful to the APT for providing support, including much needed funding, to enable the Subcommittee to develop better relations with other treaty bodies, NPMs and NGOs. The Subcommittee would not otherwise have been able to take these activities forwards. The Subcommittee has continued to use the valuable materials and information produced by the APT, in the context of the preparation for visits and for interaction with NPMs.

59. The Subcommittee has remained in close contact with Bristol University's Optional Protocol Project and has exchanged ideas and views on a number of issues central to the Subcommittee's work. The project team has been involved in organizing regional activities and has provided a critical external academic perspective concerning aspects of the Subcommittee's work, for which the Subcommittee is very grateful.

60. The Optional Protocol Contact Group (OCG) has continued to assist, advise and support the Subcommittee on Prevention of Torture, including financially, in particular by making it possible for Subcommittee members to participate in important meetings related to the Optional Protocol (see paragraph 39 above and appendix III below). The Subcommittee meets with the OCG during each of its plenary sessions. This provides an important formal opportunity for the sharing of information and ideas, in addition to the many informal contacts and communications with organizations in the group. The Subcommittee appreciates the support and interest of the OCG, which has contributed

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[23] In accordance with article 11 (c) of the Optional Protocol.

substantially to its development of working methods and to the work of the Subcommittee in relation to NPMs.

61. The Subcommittee notes with appreciation the continuing contribution made by civil society both to promoting ratification of, or accession to, the Optional Protocol, and to the implementation process.

VI. ADMINISTRATIVE AND BUDGETARY MATTERS

A. Resources in 2008-2009

62. Article 25 of the Optional Protocol states that the "expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations" and that the "Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol".

63. Since the Subcommittee on Prevention of Torture began its work in 2007, it remains the case that no United Nations funding has been provided for the Subcommittee to carry out its mandate in relation to NPMs and no funding is foreseen for this work for the period up to the end of 2009. Over the first three crucial years of the Subcommittee's activities, United Nations support for Subcommittee work with NPMs will have been restricted to contact in Geneva during the three one-week plenary sessions or during a Subcommittee visit. With funding only available for nine visits in the period from the Subcommittee on Prevention of Torture inception until the end of 2009, the Subcommittee will have visited less than one fifth of the States parties and their NPMs in these first three years. The Subcommittee has tried to find creative options to support its vital work in this area and has made detailed proposals, with justifications, for a revision of the original budget assumptions for the biennium 2010-2011 (see section C below).

B. Secretariat of the Subcommittee on Prevention of Torture

64. In May 2008 the Subcommittee welcomed the arrival of its first Secretary, Patrice Gillibert, after a series of acting secretaries over the course of the first 15 months of operations. The Secretary to the Subcommittee has already proved a great asset, through participation in the three visits carried out following his arrival in post and by virtue of his efforts to improve the organization and support available to the Subcommittee on Prevention of Torture. The Subcommittee also welcomed a new administrative assistant, who has very efficiently and patiently helped the Subcommittee in a wide range of organizational matters.

65. The Subcommittee on Prevention of Torture wishes to place on record its deep gratitude to Kukka Savolainen, the seconded member of staff who worked with the Subcommittee within the OHCHR until March 2009. She has provided the main continuity of staffing since April 2007 and her contribution to the drafting of plenary and visit reports has been invaluable. Her support of the Subcommittee has demonstrated the value of continuity, skill and experience in the special elements of the Subcommittee's work.

66. On the six Subcommittee visits carried out to date, the Subcommittee has worked with a total of 12 different members of OHCHR staff. Whereas the Subcommittee is grateful to the individuals concerned for their efforts to provide assistance, it is strongly of the opinion that having new staff with no experience of, or training for, Subcommittee visits on each new visit places the staff members concerned at a distinct disadvantage and under considerable stress. Subcommittee visits to places where people are deprived of their liberty require specific expertise and empirical skills; they are by their very nature liable to include difficult situations which can involve risks to those not familiar with the work. It is not conducive to effective preventive visiting to have new staff members on every visit, however dedicated the individuals may be. This is not the mark of a professional approach to supporting the Subcommittee on visits.

67. During 2008 the Subcommittee on Prevention of Torture experienced significant problems with the process of drafting the second visit report owing to the fact that none of the staff who went on that visit continued to work with the Subcommittee after the visit or were available to assist in the drafting process. The result was that the draft report on the visit to the Maldives, carried out in December 2007, was not ready for plenary consideration until November 2008.

68. The Subcommittee on Prevention of Torture trusts that in future it will be possible for the Subcommittee to benefit from the support of staff members who have past experience of Subcommittee visits and who have shown themselves suited to this specific kind of work in the field. To that end, the Subcommittee looks forward to the provision of a targeted Subcommittee secretariat. The Subcommittee has been proposing since its inception a core team of four suitably trained and experienced staff members, agreed at the meeting in April 2007 with the former High Commissioner for Human Rights.[24] A core team would provide the possibility for a degree of continuity of staff involvement in visits as well as in the processes of planning visits and drafting of reports. At the Subcommittee's inception the number of States parties was considerably less than at present and the number continues to rise rapidly. Staff provision should be reviewed as the number of States parties increases.

C. Budgetary requirements

69. The Subcommittee on Prevention of Torture has been engaged in discussions with the department of the OHCHR responsible for budget and staffing with a view to obtaining a budget capable of supporting the mandate of the Subcommittee in accordance with the requirements of the Optional Protocol. The Subcommittee is grateful for the provision by members of the department of information relating to costing of Subcommittee visits, which has enabled the Subcommittee to form a clearer picture of the lacunae.

70. The Subcommittee considers it essential to revise the inappropriate assumptions on which its original budget was based, assumptions which, as the first annual report pointed out, allowed, with certain key omissions, for only four regular visits, lasting 10 days each per year and two short follow-

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[24] Two P-4, two P-3 posts, in addition to one GS post.

up visits of three days each.[25] On this basis the Subcommittee would be able to carry out a regular visit to each of the existing 46 States parties once every 12 years.

71. The Optional Protocol provides for a minimum of two Subcommittee members on a visit. In the original budget assumptions, that minimum had become the maximum; the original budget assumed visits involving only two Subcommittee members, two Secretariat staff members and two external experts. Based on Subcommittee members' experience and expertise in preventive visiting, the revised Subcommittee proposals are based on the assumption that an average visit would require four Subcommittee members. Two external experts and two Secretariat staff members would, however, be appropriate for most visits.

72. In the summer of 2008, after the Subcommittee on Prevention of Torture had carried out four visits, the United Nations decided that the Subcommittee must be accompanied on all visits by a United Nations security officer and that the cost of this staff member must be met out of the Subcommittee's budget. The Subcommittee understands the need to consider the security situation during its field work. Subcommittee members are not covered by United Nations insurance when carrying out visits, but, before commencing visits, earned advanced level United Nations security certificates. The Subcommittee notes that certain international preventive mechanisms operating on a regional basis, notably the CPT, carry out visits without a security officer. The Subcommittee is of the view that the need for a security officer should be assessed on a case-by-case basis, with due regard to the risks involved and to the budgetary implications. The Subcommittee proposes that this additional cost, not reflected in the assumptions on which the budget for Subcommittee visits was based, be included in all future budgetary provisions.

73. The Subcommittee's revised proposals also include provision for interpretation on visits, another element missing in the original budget assumptions. It is axiomatic that interpretation is a necessary part of visits to places where people are deprived of their liberty and a major cost factor. The original assumptions in the budget significantly underestimated the actual cost of a Subcommittee visit and would, at best, only apply for a small country without such complicating factors as a federal system or a large custodial population, to name but two factors.

74. The revised proposals address a matter of particular concern to the Subcommittee on Prevention of Torture - the previous lack of specific provision within the regular budget for the Subcommittee's mandate to work in direct contact with NPMs. In the crucial early phase of the development of NPMs, during which every State party is obliged to designate/establish and/or maintain national preventive mechanisms, the Subcommittee must have the capacity to work with the NPMs. The Subcommittee continues to receive requests to take part in and to provide assistance for activities relating to the development of the NPMs. Such activities have hitherto not been approved for funding by the United Nations. The Subcommittee has endeavoured, as far as possible, to respond positively to such requests with generous support from outside sources, in particular member organizations of OCG. The Subcommittee regards this work as integral to its mandate and notes that this is reflected in *OHCHR*

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[25] As the Subcommittee on Prevention of Torture is far from visiting most States parties even for the first time, follow-up visits are not a priority at this stage.

2007 Report: Activities and Results, which refers to the Subcommittee's work in supporting NPMs (p. 21).[26]

D. Proposals for change

75. In the light of the above considerations, the Subcommittee on Prevention of Torture has continued to struggle to carry out its work with an inadequate budget based on faulty assumptions about the nature and content of the Subcommittee mandate. The Subcommittee consequently considers that it is not yet in a position to fulfil its mandate. For that reason it has put forward detailed plans and proposals, with elaborated reasons for its future programme of work and for the associated budget requirements for the biennium 2010-2011.

76. As the Subcommittee on Prevention of Torture sees it, there is a stark choice to be made. Either lip service is paid to the idea of a system of visits by preventive bodies or a major injection of funds is required. Prevention of torture and other cruel, inhuman or degrading treatment or punishment is not cost neutral.

VII. ORGANIZATIONAL ACTIVITIES

A. Plenary sessions of the Subcommittee on Prevention of Torture

77. Over the course of the 12 months covered by the present report, the Subcommittee on Prevention of Torture held three one-week sessions, from 23 to 28 June 2008; from 17 to 21 November 2008 and from 8 to 14 February 2009 respectively. These sessions were devoted to planning visits, meeting with representatives of States parties to be visited, and adopting visit reports. Considerable attention was given to strategic planning and selection of countries for future visits.

78. The sessions also involved examination and discussion of information relating to States parties and NPMs and delegation planning for field activities, as well as meetings with representatives of bodies within the United Nations and from other organizations active in the field of prevention of ill-treatment, and refinement of a series of materials designed to provide basic information about the Subcommittee on Prevention of Torture.

B. Development of working methods

79. The Subcommittee on Prevention of Torture considers the development of working methods as an essential part of its ongoing activities. However, the continuing pressure of work has meant that the five days of the three plenary sessions per year afford insufficient time for the proper discussion of policy issues arising during the course of the Subcommittee's work and consideration of evolving working methods. The Subcommittee members and Secretariat staff members have devoted time on Saturdays following the plenary to this vital element of ongoing development. The Subcommittee has been supported in the process of developing its working methods by the work of the members of

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[26] Available at http://www.ohchr.org/Documents/Press/OHCHR_Report_07_Full.pdf

organizations of the OCG, as well as by the practical support of the APT, for which the Subcommittee is most grateful.

80. The Subcommittee continued to work on refining the guidelines on visits, as part of the process of refining its working methods. Subcommittee visits vary according to, inter alia, the complexity of the structures existing within a State party (e.g. federal states, devolved responsibilities for deprivation of liberty) and the size of the population in different kinds of custodial settings. Working methods on visits are constantly evolving and depend upon ongoing debriefing and feedback from visits.

C. Confidentiality and secure communications

81. Progress was made in achieving a system of secure communications in order to facilitate the safe discussion and exchange of data relating to confidential matters falling within the Subcommittee's mandate. Such a system was essential given the need to protect persons providing information to the Subcommittee and personal data obtained by the Subcommittee, which could place individuals at serious risk, as well as to comply with the obligation to keep confidential all information and observations regarding a State party which has been visited. In 2008, OHCHR staff worked on the process of providing the Subcommittee members with access to a secure Internet facility, GROOVE, which has the capacity to allow document review and discussion in strict confidentiality. This provision was fully realized in early 2009 and has greatly facilitated the work of drafting and reviewing documents and enhanced the efficiency of the Subcommittee. The Subcommittee on Prevention of Torture is grateful that it is now able to exchange information under conditions of confidentiality commensurate with the nature of its work.

Appendix I

VISITS CARRIED OUT IN 2008-2009

1. First periodic visit to Benin: 17-26 May 2008

Places of deprivation of liberty visited by the delegation:

Police facilities

(a) Police stations

Commissariat Central de Cotonou

Commissariat Central de Porto-Novo

Commissariat de police de Dantokpa

Commissariat de police de Dodji

Commissariat d'arrondissement de Ouando

(b) Gendarmeries

Compagnie de Gendarmerie de Cotonou - Brigade Territoriale de Godomey

Brigade de Gendarmerie de Zogbodomey

Brigade Territoriale et de Recherches de Porto-Novo

Brigade Territoriale et de Recherches de Bohicon

Brigade de Gendarmerie de Séhoué

Prisons

Prison civile de Cotonou

Prison civile d'Akpro-Missérété

Prison civile d'Abomey

Other institutions

Palais de Justice d'Abomey

2. First periodic visit to Mexico: 27 August-12 September 2008

Places of deprivation of liberty visited by the delegation:

Police facilities

In the Federal District:

National Federal Preventive Custody Unit
Federal Agency for Holding Cells (Calle Liverpool)
Agency No. 50

In Jalisco:

Ministry of Public Security, holding cells
Preventive-custody unit, 2750 Avenida Cruz del Sur
Office of the State Attorney-General (Calle 14)
Principal holding unit, Municipal Police

In Nuevo León:

State Investigation Agency, Office of the Attorney-General ("Gonzalito")
Alamey Municipal Police

In Oaxaca:

Municipal Preventive Police
Office of the Attorney-General, holding cells
Elite Police Force (preventive custody)

Prisons

In the Federal District:

Oriente prison

In Mexico State:

Molino Flores Prevention and Social Rehabilitation Centre

In Jalisco:

Prevention and Rehabilitation Centre for Women
State of Jalisco Pretrial Detention Centre, Puente Grande
Puente Grande Social Rehabilitation Centre

In Oaxaca:

Santa María Ixcotel prison
Valles Centrales regional prison

Military establishments

Military prison No. 1, Federal District

Juvenile centre

Monterrey Secure Unit for the Rehabilitation of Juvenile Offenders
Department for the Enforcement of Measures for Juveniles, Oaxaca Guardianship Council

Psychiatric facilities, with a focus on conditions

In Oaxaca:

Annex to Zimatlán prison
Cruz del Sur psychiatric hospital

3. First periodic visit to Paraguay: 10-16 March 2009

Places of deprivation of liberty visited by the delegation:

Police facilities

Jefatura de Policía Metropolitana (Asunción):

Comisaría 3°
Comisaría 5°
Comisaría 9°
Comisaría 12°
Comisaría 20°
Comisaría de Mujeres

Jefatura de Policía Central:

Comisaría 1° de San Lorenzo
Comisaría 9° de Limpio

Jefatura de Policía Amambay:

Comisaría 3° de Barrio Obrero, Pedro Juan Caballero

Jefatura de Policía San Pedro:

Comisaría 8º de San Estanislao
Agrupación Especializada de la Policía Nacional

Prisons

Penitenciaria Nacional de Tacumbú
Penitenciaria Regional de Pedro Juan Caballero

Psychiatric facilities

Hospital Neuropsiquiátrico

Appendix II

PROGRAMME OF WORK OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE IN THE FIELD FOR 2009

Visit to Paraguay: (first half of 2009)

Visit to Honduras: (second half of 2009)

Visit to Cambodia: (second half of 2009)

In-country engagement in Estonia: (during 2009)

Appendix III

PARTICIPATION OF THE MEMBERS OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE IN OPTIONAL PROTOCOL-RELATED ACTIVITIES

Africa

Southern African Region

Regional Conference on the Optional Protocol, organized by the Bristol University Optional Protocol Project with APT, FIACAT, the African Commission on Human and People's Rights. Cape Town, April 2008 (Silvia Casale, Zdenek Hajek, and Victor Rodriguez Rescia).

Americas

Central American Region

Regional Central American workshop on strategies and challenges of the ratification and implementation of the Optional Protocol. Tegucigalpa, Honduras, October 2008 (Hans Draminsky Petersen, Victor Rodriguez Rescia and Mario Coriolano).

International seminar on "The Optional Protocol and Federal States: Challenges and possible Solutions", organized by the APT, CEJIL, la Secretaria de Derechos Humanos, Ministerio de Justicia, Seguridad y Derechos Humanos, Presidencia de la Nación, el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, Presidencia de la Nación. Buenos Aires, September 2008 (Mario Coriolano, Miguel Sarre Iguinez and Patrice Gillibert, Subcommittee Secretary).

Middle East and North Africa

Morocco

Regional conference on the Optional Protocol, organized by the APT. February 2009 (Silvia Casale).

Asia-Pacific

Cambodia

Workshop on the Optional Protocol, organized by RCT. January 2009 (Hans Draminsky Petersen).

Europe

OSCE region

OSCE seminar on monitoring. Ankara, May 2008 (Marija Definis Gojanovic and Zdenek Hajek).

Human Dimension Meeting on prevention of torture, death penalty and combating terrorism, organized by the OSCE/ODIHR. Warsaw, October 2008 (Zbigniew Lasocik).

The Optional Protocol in the OSCE region: What it means and how to make it work. Regional conference organized by the Bristol Optional Protocol Project with the OSCE/ODIHR. Prague, November 2008 (Silvia Casale, Zdenek Hajek).

Kyrgyz Republic Civil Society Seminar organized by the European Union. Bishkek, Kyrgyz Republic, March 2009 (Zdenek Hajek).

Ireland

Roundtable meeting on the establishment of an NPM, organized by the Irish Human Rights Commission. Dublin, May 2008 (Hans Draminsky Petersen).

Poland

Lecture on prevention of torture for lawyers, organized by Helsinki Foundation for Human Rights. Poland, October 2008 (Zbigniew Lasocik).

Republic of Moldova

Workshop for the Moldovan NPM, organized by the APT under the auspices of the Council of Europe. Chisinau, January 2009 (Zbigniew Lasocik).

Serbia

Seminar on prevention of torture in Serbia, organized by the Protector of Citizens of Serbia, the Council of Europe and the OSCE Mission for Serbia. Belgrade. March 2009 (Marija Definis Gojanovic).

Spain

Inaugural Conference on Implementation of the National Preventive Mechanism. Barcelona, March 2009 (Silvia Casale).

Appendix IV

OPTIONAL PROTOCOL CONTACT GROUP

Amnesty International (AI)

Association for the Prevention of Torture (APT)

Action by Christians for the Abolition of Torture (FIACAT)

Bristol University Optional Protocol project

Mental Disability Advocacy Centre (MDAC)

Penal Reform International (PRI)

Rehabilitation and Research Centre for Torture Victims (RCT)

World Organization against Torture (OMCT)

Appendix V

ANALYSIS OF THE ISTANBUL PROTOCOL

Introduction

1. The Istanbul Protocol is a United Nations manual on medical and psychological documentation of torture and other cruel, inhuman and degrading treatment or punishment and its application in the process of investigation and legal proceedings in the context of the struggle against impunity and the prevention of torture and ill-treatment. The following presentation proceeds from the medical perspective.

2. Considering the validity and usefulness of the Istanbul Protocol as a soft-law instrument, the Subcommittee on Prevention of Torture is of the view that States should promote, disseminate and implement the Protocol as a legal instrument to document torture cases of people deprived of their liberty through medical and psychological reports drafted under adequate technical standards. These reports can not only constitute important evidence in torture cases but, most importantly, they can contribute to the prevention of cruel, inhuman and degrading treatment. The Subcommittee on Prevention of Torture notes that it is crucial that doctors and other health professionals be effectively independent from police and penitentiary institutions, both in their structure - human and financial resources - and function - appointment, promotion and remuneration.

3. The Subcommittee on Prevention of Torture is of the opinion that since the Istanbul Protocol is a United Nations document, the provisions in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be a minimum standard for the definition of torture. Article 1 of the Convention states that "torture means any act by which severe pain or suffering, whether physical or mental, is inflicted intentionally …".

4. Thus, extension of the definition by e.g. adding that the victim's life or function of vital organs must have been endangered is inappropriate.

5. The Istanbul Protocol gives detailed guidance for medical/psychological professionals for the best standard of the examination of a person who alleges to have been tortured or ill-treated.

6. The basic principle in the appraisal of the veracity of allegations of torture and ill-treatment is to inquire into:

(a) The medical history and the history of torture;

(b) The subjective state of health/presence of symptoms during torture and in the ensuing period of time;

(c) Perform a profound medical and psychological examination, and if necessary, refer the person to specialized examinations like various kinds of scans;

(d) In conclusion, the degree of concordance/agreement between those elements is determined.

7. The result of the medical/psychological examination can be graduated from, e.g.: exposure to torture beyond any reasonable doubt; high level of agreement; or partial agreement between the various categories of information - with or without objective signs of pathologies (physical and or mental); to disagreement.

8. However, a number of reservations should be taken into consideration, e.g., impaired memory of the victim and psychical inhibitions, ailments that are prevalent in many victims of torture.

9. The Subcommittee on Prevention of Torture notes that with the methods of torture normally used in times of peace, physical marks are most often unspecific or even absent. The presence, the nature and degree of severity of physical and psychological symptoms/illness after torture vary, depending not only on the nature of the torture, but also, e.g. on the physical and psychological constitution and background of the victim and the existence of co-morbidity.

10. Thus, the Subcommittee on Prevention of Torture is of the opinion that often existence of torture can neither be proved nor disproved through a medical/psychological examination carried out according to the Istanbul Protocol.

Contextualization of the Istanbul Protocol

11. In the fight against impunity the Istanbul Protocol is a useful tool in the appraisal of allegations of torture. The result of the medical/psychological examination is a piece of evidence together with other evidence.

12. The examination can never identify the torturers. This would rely on other evidence.

13. In a court case the judge may decide that the whole of the evidence is not sufficient to convict implicated officers.

14. The Subcommittee on Prevention of Torture notes that acquittal of an implicated officer does not necessarily mean that the statements of torture were false, but only that the whole of the evidence was not strong enough to lead to conviction. The decision of the judge is based on the sum of evidence on two levels:

- Whether torture had happened
- Whether the evidence was strong enough to convict particular persons

15. The Subcommittee on Prevention of Torture finds it necessary that judges, lawyers and public prosecutors who deal with cases of possible torture have basic knowledge of the principles of the Istanbul Protocol so that they can assess compliance of the examination with the principles of the Protocol and understand the conclusion of the medical/psychological examination and the basis for it.

16. However, the final conclusion of the examination should only be contested by medical/psychological experts with reference to objective deficiencies and errors.

17. Unless the medical/psychological experts conclude that there were gross disagreements between the various pieces of information, which could not be ascribed to e.g. the mental state of health of the complainant, a court acquittal of accused officers should never be taken as an indication that the allegations were false, only that the evidence was not sufficient to lead to conviction.

18. In the prevention of torture the Istanbul Protocol can be an important tool provided that it is contextualized to the daily activities of doctors working in places of risk, first of all those doctors who work in institutions where detainees are held during the first phase of the criminal investigation.

19. Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (resolution 43/173 of 9 December 1988) states that "a proper medical examination shall be offered to a detainee or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment".

20. In many countries this principle is implemented. This routine medical examination should:

- Be carried out according to a format
- The format should include all the items below and should be filled in by the doctor with the consent of the detainee
- A medical history
- Allegations of exposure to recent violence and ill-treatment by the police or other persons
- A description of present health/subjective symptoms at the time of examination
- A thorough medical examination with an inspection of the whole surface of the body
- On the basis of this the doctor should assess whether alleged torture/severe ill-treatment could have happened

21. In the examination and the assessment of the possibility of exposure to torture/severe ill-treatment the medical doctor should have a proactive attitude.

22. The medical doctor working in police and detention facilities has a key role and should have training in the principles of documenting and reporting torture and ill-treatment.

23. There snould be clear lines of command on when, how and to whom he should report cases of alleged torture and ill-treatment. The first step in the doctor's reporting should be to send a copy of the report to his superior - with the consent of the detainee.

24. If no consent from the detainee exists, the doctor should take out any information that could identify the detainee and report to a central register, cited below.

25. The superior should decide - together with the general prosecutor - whether there are grounds for a disciplinary inquiry or a criminal investigation by independent bodies.

26. The superior should report the case and the decision to inquire or investigate to the ministry responsible for the police and to the central register.

27. Not only in cases of allegations of torture, but also in cases where the detainee have remarkable lesions or a high number of lesions without allegations of torture/ill-treatment, the doctor should note the detainee's account of their origin in the medical file and send a copy of the medical file to his superior.

28. Such reports should be compiled in the database below and classified as a case of violence of other than torture or of uncertain origin.

29. In all cases where the doctor assesses that torture or severe ill-treatment *could have* happened, the detainee should be offered a thorough medical/psychological examination by trained experts according to the Istanbul Protocol to take place within a time limit that permits the experts to assess superficial physical lesions possibly caused by torture/severe ill-treatment, i.e. within a week.

30. The Subcommittee on Prevention of Torture is of the opinion that all allegations of torture and severe ill-treatment, and cases of multi-traumatization of uncertain origin cited above, should be registered in a database with information about - among other items:

- Hour, date and place of alleged ill-treatment
- The security body implicated and if possible characteristics of involved officers
- Place of apprehension and detention
- Nature of the allegations
- Most important findings and the conclusion of the medical examination by the doctor in the police facility
- Most important findings and the conclusion of the expert medical/psychological examination
- Details of an inquiry and the result hereof

31. The Subcommittee on Prevention of Torture is of the opinion that a proactive compliance with such a programme by doctors in police and detention facilities would have a considerable impact on preventing torture. The proactive attitude to examining cases of possible torture and ill-treatment

should be made known to all police officers and the implementation would deter many officers from resorting to torture and ill-treatment.

32. A database as outlined would be a useful tool for the authorities to analyse the problem of torture including identifying risk factors, in order to better prevent torture and ill-treatment.

Final remarks

33. The Subcommittee on Prevention of Torture underlines that the number of complaints of torture is not a reliable indicator of the real prevalence of the problem. Complicated complaint procedures and risk of reprisals may diminish the number drastically.

34. The Subcommittee on Prevention of Torture notes that one of the objectives of torture is to break down the victim, e.g. to make him confess to a crime or to give information. It follows that most victims of torture do not have the necessary mental strength to enter into bureaucratic technicalities and lengthy procedures with interviews lasting several days. It also follows that the doctor working in police facilities apart from being proactive should always - on an informed basis - respect a possible victim of torture's wish not to be referred to expert examination and an eventual wish to have information for the database sent in a manner that cannot identify the detainee directly.

35. In police custody a complainant should be safeguarded against direct reprisals from implicated officers through the maintenance of medical confidentiality.

36. In the system of justice the complainant should be safeguarded against reprisals, e.g. charges with defamation of authorities in case the medical/psychological examination fails to positively demonstrate exposure to torture beyond "any reasonable doubt" (see classification above).

Annex VIII

JOINT STATEMENT ON THE OCCASION OF THE UNITED NATIONS INTERNATIONAL DAY IN SUPPORT OF VICTIMS OF TORTURE

26 June 2009

United Nations experts call for enhancing the protection of persons with disabilities

A number of independent experts from several United Nations mechanisms,[a] referring to the first session of the Committee on the Rights of Persons with Disabilities that convened in Geneva from 23 to 27 February 2009, recalled today that persons with disabilities continue to run an increased risk of falling victim to abuse and neglect in a number of contexts: many are involuntarily confined for long periods, at times without legal basis and proper review mechanisms and in inadequate conditions; inside institutions they are often subjected to restraint, sometimes severe forms of restraint, physical, mental and sexual violence, and seclusion; moreover, persons with disabilities are especially vulnerable to violence and abuse, including sexual abuse, inside the home, at the hands of family members, caregivers, health professionals and members of the community. Finally, they risk being exposed to medical experimentation and intrusive and irreversible medical treatments without their consent.

They stated that "In light of the absolute prohibition of torture, no exceptional circumstances may be invoked for its justification, and States have the obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment, including of persons with disabilities." They further stressed that "Forms of severe violence perpetrated by State or private actors directed at disabled persons can amount to torture since, if their purpose is discriminatory, they fall within the definition of torture in the Convention against Torture.

Insofar as certain prison conditions, interrogation techniques, or procedures which are in general permissible under international law may constitute torture and ill-treatment if applied to a person with a disability, special needs have to be accommodated to live up to relevant human rights obligations. In addition, the infliction of torture and other forms of inhuman, cruel or degrading treatment or punishment may result in physical and/or mental disabilities or aggravate existing impairments.

They stressed that two key principles enshrined in several international instruments and reinforced in the Convention on the Rights of Persons with Disabilities, should be at the centre of the protection of persons with disabilities at all times: non-discrimination in all areas, including confinement, and the requirement of free and informed consent to medical treatment. They also expressed their sincere hope that increased international scrutiny will help to shed light on abusive practices vis-à-vis persons with disabilities and to combat them more effectively. They therefore called on States that have not yet done so to become parties to the Convention against Torture and, its Optional Protocol as well as to the Convention on the Rights of Persons with Disabilities and to take all other measures aimed at ensuring that all persons with disabilities have the right to enjoy all human rights and are fully protected from torture and cruel, inhuman and degrading treatment and punishment.

They finally paid tribute to all Governments, civil society organizations and individuals engaged in activities aimed at preventing torture, punishing it and ensuring that all victims obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. They expressed their gratitude to all donors to the United Nations Voluntary Fund for Victims of Torture and hope that contributions to the Fund will continue to increase, so that more victims of torture and members of their families can receive the assistance they need. They called on all States, in particular those which have been found to be responsible for widespread or systematic practices of torture, to contribute to the Voluntary Fund as part of a universal commitment for the rehabilitation of torture victims.

Note

[a] The Committee against Torture; the Subcommittee on Prevention of Torture; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture; and the Committee on the Rights of Persons with Disabilities.

Annex IX

STATEMENT OF THE COMMITTEE ON THE ADOPTION OF ITS CONCLUDING OBSERVATIONS*

14 May 2009

1. As an independent treaty body carrying out its functions under the Convention, which consists of experts of high moral standing and recognized human rights competence serving in their personal capacity, and elected by the States parties, consideration being given to equitable geographical distribution (paragraph 1 of article 17 of the Convention), the Committee strongly rejects any allegations that it does not discharge its function in an independent and expert manner.

2. The Committee considers that unfounded allegations about the Committee, or its individual members, harm the achievement of the Convention's goals.

3. The concluding observations of the Committee against Torture are adopted by the Committee in accordance with paragraph 3 of article 19 of the Convention against Torture and chapters X, XI and XVI of the Committee's rules of procedure and, pursuant to these provisions, are adopted by the Committee as a whole, and not by individual members.

4. Concluding observations are adopted according to the following method: the members of the Committee designated as Rapporteurs on a State party's report prepare a preliminary draft. This draft is based on the information provided (1) by the State party, including by the State party's delegation during the dialogue with the Committee, (2) by mechanisms and agencies of the United Nations, including other treaty bodies and relevant special procedures of the Human Rights Council, and (3) by other sources, especially National Human Rights Institutions and organizations of the civil society, as well as (4) on the assessment the Committee does of the implementation, by the State party, of the provisions of the Convention and the Committee's previous recommendations.

5. The draft is presented to the plenary of the Committee and the members discuss it on the basis of the information indicated above. The proper discharge of the Committee's mandate under the Convention requires a careful and thorough review of such information as the Committee members require, as it is their sole prerogative as experts to decide on their own sources of information. Following this discussion, in plenary, the concluding observations are adopted by consensus or, if consensus is not possible, by voting.

6. Concluding observations are an instrument of cooperation with States parties which reflect the common assessment, made by the Committee, on a particular State party's obligations under the Convention. The functions of the Committee are to consider the measures taken by States parties to prevent torture and other cruel, inhuman or degrading treatment or punishment, hence making more effective the struggle against those acts throughout the world (preamble and articles 2, 16 and 19 of

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* Previously issued under symbol number CAT/C/42/3.

the Convention). The Committee will continue to carry out its functions in an independent and expert manner, as guardian of the Convention against Torture and in accordance with its provisions.

7. The Committee against Torture recalls the obligations of all States parties to cooperate with the Committee and to respect the independence and objectivity of its members.

Annex X

DECISION OF THE COMMITTEE TO REQUEST APPROVAL FROM THE GENERAL ASSEMBLY AT ITS SIXTY-FOURTH SESSION FOR ADDITIONAL MEETING TIME IN 2010 AND 2011

19 November 2008

At its thirty-eighth session in May 2007, the Committee adopted a new procedure on a trial basis which includes the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of their periodic report. The replies of the State party to the list of issues would constitute its report under article 19 of the Convention. The Committee is of the view that this procedure could assist States parties in preparing focused reports. The lists of issues prior to reporting could guide the preparation and content of the report, and the procedure would facilitate reporting by States parties and strengthen their capacity to fulfil their reporting obligations in a timely and effective manner.

The Committee has decided to initiate this procedure in relation to periodic reports that are due in 2009 and 2010. It will not be applied to States parties' reporting obligations where initial reports are concerned or to periodic reports for which a previous report has already been submitted and is awaiting consideration by the Committee. On 15 May 2007, the Committee met with States parties and introduced and discussed the new procedure. The Committee adopted lists of issues for States parties whose reports are due in 2009, at its thirty-ninth session in November 2007. The lists of issues were transmitted to the respective States parties on 28 February 2008, with a request that replies be submitted by 30 June 2009, should the State party wish to avail itself of this new procedure.

In addition, the Committee requested information from the 11 States parties eligible for this procedure as to their intention of availing themselves of the new procedure. This information was requested to allow the Committee to plan its meeting requirement to ensure the timely consideration of these reports. As of 16 May 2008, the Czech Republic, Ecuador, Greece, Kuwait, Monaco and Turkey had officially confirmed that they would avail themselves of the new procedure. In addition, Bosnia and Herzegovina, Cambodia and Peru had informally notified the Committee that they too would avail themselves of the new procedure.

During the current session, the Committee has initiated the mentioned procedure in regard to States parties whose reports are due in 2010, preparing list of issues to be adopted at its May 2009 session for Armenia, Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico, Morocco, Russian Federation, Saudi Arabia and Slovenia.

The programme budget implications arising from the Committee's decision have been circulated amongst the members of the Committee (oral statement, dated 14 November). The Committee therefore requests the General Assembly, at its sixty-fourth session, to approve the present request and to provide appropriate financial support to enable the Committee to meet for an additional session of four weeks in each of 2010 and 2011, in addition to the two regular three-week sessions per year.

Annex XI

OVERDUE REPORTS

State party	*Date in which the report was due*	*Revised date*[a]
	Initial reports	
Guinea	8 November 1990	
Somalia	22 February 1991	
Seychelles	3 June 1993	
Cape Verde	3 July 1993	
Antigua and Barbuda	17 August 1994	
Ethiopia	12 April 1995	
Côte d'Ivoire	16 January 1997	
Malawi	10 July 1997	
Bangladesh	4 November 1999	
Niger	3 November 1999	
Burkina Faso	2 February 2000	
Mali	27 March 2000	
Turkmenistan	25 July 2000	
Mozambique	14 October 2000	
Ghana	6 October 2001	
Botswana	7 October 2001	
Gabon	7 October 2001	
Lebanon	3 November 2001	
Sierra Leone	25 May 2002	
Nigeria	28 June 2002	
Saint Vincent and the Grenadines	30 August 2002	
Lesotho	11 December 2002	

State party	*Date in which the report was due*	*Revised date*[a]
Mongolia	23 February 2003	
Ireland	11 May 2003	
Holy See	25 July 2003	
Equatorial Guinea	6 November 2003	
Djibouti	5 December 2003	
Timor-Leste	16 May 2004	
Congo	30 August 2004	
Swaziland	25 April 2005	
Maldives	20 May 2005	
Syrian Arab Republic	18 September 2005	
Liberia	22 October 2005	
Mauritania	17 December 2005	
Madagascar	13 January 2007	
Andorra	22 October 2007	
San Marino	27 December 2007	
Thailand	1 November 2008	
	Second periodic reports	
Afghanistan	25 June 1992	
Belize	25 June 1992	
Uganda	25 June 1992	[25 June 2008]
Togo	17 December 1992	[17 December 2008]
Guyana	17 June 1993	[31 December 2008]
Brazil	27 October 1994	

State party	*Date in which the report was due*	*Revised date*[a]
Guinea	8 November 1994	
Somalia	22 February 1995	
Romania	16 January 1996	
Seychelles	3 June 1997	
Cape Verde	3 July 1997	
Cambodia	13 November 1997	
Burundi	19 March 1998	[31 December 2008]
Antigua and Barbuda	17 August 1998	
Ethiopia	12 April 1999	
Namibia	27 December 1999	
Tajikistan	9 February 2000	[31 December 2008]
Cuba	15 June 2000	
Chad	9 July 2000	
Côte d'Ivoire	16 January 2001	
Kuwait	6 April 2001	
Malawi	10 July 2002	
Honduras	3 January 2002	
Kyrgyzstan	4 October 2002	
Saudi Arabia	21 October 2002	
Bahrain	4 April 2003	[4 April 2007]
Bangladesh	3 November 2003	
Niger	3 November 2003	
Burkina Faso	2 February 2004	
Qatar	10 February 2004	[10 February 2008]

State party	*Date in which the report was due*	*Revised date*[a]
Mali	27 March 2004	
Bolivia	11 May 2004	
Turkmenistan	24 July 2004	
Mozambique	13 October 2004	
Lebanon	5 October 2005	
Botswana	7 October 2005	
Gabon	8 October 2005	
Ghana	18 December 2005	
Sierra Leone	25 May 2006	
Nigeria	28 July 2006	
Saint Vincent and the Grenadines	31 August 2006	
Lesotho	12 December 2006	
Mongolia	23 February 2007	
Ireland	11 May 2007	
Holy See	25 July 2007	
Equatorial Guinea	6 November 2007	
Djibouti	5 December 2007	
Timor-Leste	16 May 2008	
Congo	30 August 2008	
	Third periodic reports	
Afghanistan	25 June 1996	
Belize	25 June 1996	
Philippines	25 June 1996	
Senegal	25 June 1996	
Uruguay	25 June 1996	

State party	*Date in which the report was due*	*Revised date*[a]
Turkey	31 August 1997	[31 August 2005]
Tunisia	22 October 1997	[30 November 1999]
Brazil	27 October 1998	
Guinea	8 November 1998	
Somalia	22 February 1999	
Malta	12 October 1999	[1 December 2000]
Romania	16 January 2000	
Nepal	12 June 2000	[12 June 2008]
Yemen	4 December 2000	
Jordan	12 December 2000	
Seychelles	3 June 2001	
Cape Verde	3 July 2001	
Cambodia	13 November 2001	
Mauritius	7 January 2002	
Slovakia	27 May 2002	
Antigua and Barbuda	17 August 2002	
Armenia	12 October 2002	
Costa Rica	10 December 2002	
Sri Lanka	1 February 2003	[1 February 2007]
Ethiopia	12 April 2003	
Namibia	27 December 2003	
Cuba	15 June 2004	
Chad	9 July 2004	
Côte d'Ivoire	16 January 2005	
Kuwait	5 April 2005	

State party	*Date in which the report was due*	*Revised date*[a]
El Salvador	16 July 2005	
Honduras	3 January 2006	
Malawi	10 July 2006	
Kyrgyzstan	4 October 2006	
Saudi Arabia	20 October 2006	
Bahrain	4 April 2007	[4 April 2007]
Bangladesh	3 November 2007	
Niger	3 November 2007	
Burkina Faso	2 February 2008	
Qatar	10 February 2008	[10 February 2008]
Mali	27 March 2008	
Bolivia	11 May 2008	
Turkmenistan	24 July 2008	
Mozambique	13 October 2008	
Republic of Moldova	27 December 2008	

Fourth periodic reports

Afghanistan	25 June 2000	
Belarus	25 June 2000	
Belize	25 June 2000	
Philippines	25 June 2000	
Senegal	25 June 2000	
Uruguay	25 June 2000	

State party	*Date in which the report was due*	*Revised date*[a]
Panama	22 September 2000	
Libyan Arab Jamahiriya	14 June 2002	
Brazil	27 October 2002	
Guinea	8 November 2002	
Somalia	22 February 2003	
Paraguay	10 April 2003	
Tunisia	22 October 2003	
Liechtenstein	1 December 2003	
Romania	16 January 2004	
Nepal	12 June 2004	[12 June 2008]
Bulgaria	25 June 2004	[25 June 2008]
Cyprus	16 August 2004	
Venezuela (Bolivarian Republic of)	20 August 2004	
Croatia	7 October 2004	[7 October 2008]
Yemen	4 December 2004	
Jordan	12 December 2004	
Monaco	4 January 2005	[4 January 2009]
Cape Verde	3 July 2005	
Cambodia	13 November 2005	
Mauritius	7 January 2006	
Slovakia	27 May 2006	
Morocco	20 July 2006	
Antigua and Barbuda	17 August 2006	
Costa Rica	10 December 2006	
Sri Lanka	1 February 2007	[1 February 2007]
Ethiopia	12 April 2007	

State party	*Date in which the report was due*	*Revised date*[a]
Namibia	27 December 2007	
Cuba	15 June 2008	
Chad	9 July 2008	
Democratic Republic of the Congo	16 April 2009	[16 April 2009]
	Fifth periodic reports	
Afghanistan	25 June 2004	
Argentina	25 June 2004	[25 June 2008]
Belarus	25 June 2004	
Belize	25 June 2004	
Egypt	25 June 2004	
Philippines	25 June 2004	
Senegal	25 June 2004	
Uruguay	25 June 2004	
Panama	27 September 2004	
Colombia	6 January 2005	
Libyan Arab Jamahiriya	14 June 2006	
United Kingdom of Great Britain and Northern Ireland	6 January 2006	[31 December 2008]
Brazil	27 October 2006	
Guinea	8 November 2006	
Somalia	22 February 2007	
Paraguay	10 April 2007	
Tunisia	22 October 2007	
Germany	30 October 2007	[30 October 2007]
Liechtenstein	1 December 2007	

State party	*Date in which the report was due*	*Revised date*[a]
Romania	16 January 2008	
Nepal	12 June 2008	[12 June 2008]
Bulgaria	25 June 2008	[25 June 2008]
Cameroon	25 June 2008	
Cyprus	16 August 2008	
Venezuela (Bolivarian Republic of)	20 August 2008	
Croatia	7 October 2008	[7 October 2008]
Yemen	4 December 2008	
Jordan	12 December 2008	
Monaco	4 January 2009	[4 January 2009]
Bosnia and Herzegovina	5 March 2009	[5 March 2009]

Note

[a] The date indicated in brackets is the revised date for submission of the State party's report, in accordance with the Committee's decision at the time of adoption of the concluding observations on the last report of the State party.

Annex XII

COUNTRY RAPPORTEURS AND ALTERNATE RAPPORTEURS FOR THE REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AT ITS FORTY-FIRST AND FORTY-SECOND SESSIONS (IN ORDER OF EXAMINATION)

A. Forty-first session

Report	*Rapporteur*	*Alternate*
Lithuania: second periodic report (CAT/C/LTU/2)	Mr. Gallegos	Mr. Kovalev
Serbia: initial report (CAT/C/SCG/2 and Corr.1)	Mr. Mariño	Mr. Gaye
Kazakhstan: second periodic report (CAT/C/KAZ/2)	Mr. Kovalev	Mr. Wang
China Macao and Hong Kong: fourth periodic report (CAT/C/CHN/4, CAT/C/HKG/4, CAT/C/MAC/4)	Ms. Gaer	Ms. Sveaass
Montenegro: initial report (CAT/C/MNE/1 and Corr.1)	Mr. Mariño	Ms. Kleopas
Belgium: second periodic report (CAT/C/BEL/2)	Mr. Grossman	Ms. Belmir
Kenya: initial report (CAT/C/KEN/1)	Ms. Sveaass	Mr. Wang

B. Forty-second session

Philippines: second periodic report (CAT/C/PHI/2)	Ms. Gaer	Mr. Wang
Chad: initial report (CAT/C/TCD/1)	Ms. Belmir	Mr. Grossman
Nicaragua: initial report (CAT/C/NIC/1)	Ms. Sveaass	Mr. Gallegos
New Zealand: fifth periodic report (CAT/C/NZL/5)	Mr. Kovalev	Ms. Kleopas
Chile: fifth periodic report (CAT/C/CHL/5)	Mr. Gallegos	Mr. Mariño

Israel: fourth periodic report (CAT/C/ISL/4)	Mr. Mariño	Ms. Gaer
Honduras: initial report (CAT/C/HON/1)	Mr. Grossman	Ms. Sveaass

Annex XIII

DECISIONS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION

A. Decisions on merits

Communication No. 257/2004

Submitted by:	Mr. Kostadin Nikolov Keremedchiev (not represented by counsel)
Alleged victim:	The complainant
State party:	Bulgaria
Date of complaint:	28 September 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2008,

Having concluded its consideration of complaint No. 257/2004, submitted to the Committee against Torture by Mr. Kostadin Nikolov Keremedchiev under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant is Mr. Kostadin Nikolov Keremedchiev, a Bulgarian national, born in 1973. He claims to be a victim of violations by Bulgaria of article 1, paragraph 1; article 10; article 11; article 12; and article 16 of the Convention. He is unrepresented.

The facts as presented by the complainant

2.1 In the winter of 2003, the complainant worked in the "Hizhata" restaurant, located on Snezhanka Peak, in the ski resort of Pamporovo, Bulgaria. On the evening of 3 February 2003, he went to a bar in Pamporovo with some friends. On the way home at around 6 a.m. the next morning, he decided to wait in the lobby of the Hotel "Murgavets", for the first chair lift at 8 a.m. to return to his residence at Snezhanka Peak. He fell asleep in the hotel lobby and was woken up by someone kicking him. The individual, unknown to the complainant, tried to force him to leave the hotel. The complainant explained why he was waiting there and that he was only staying for another hour. Later, the same individual, accompanied by another man, again tried to make the complainant leave the lobby.[a]

2.2 Shortly afterwards, two police officers arrived and shouted at the complainant, handcuffed him, and asked him to present his identity card. The police officers then took him out of the hotel; he was kicked "once or twice". The complainant asked the police officers to stop kicking him, but he was pushed and fell to the ground. He began calling for help, and was ordered to stop; as he did not obey, he was kicked and beaten with a truncheon, until he fainted. He woke up in a patrol car, with handcuffs and shackles on his legs. He was assaulted again in the car and one of the police officers allegedly attempted to strangle him at which point he again lost consciousness. He was taken out of the car and was threatened with being shot. He woke up in a cell of the Regional Police Directorate of Chepelare; he asked for a doctor who arrived two hours later. The complainant asked him to unchain him and to give him some medication, but he said that he was only there to do an alcohol test. The complainant was later charged with hooliganism, which he claims was initiated following a threat to the police officers who mistreated him that he would sue them for their actions.

2.3 On the morning of 5 February 2003, the complainant was released whereupon he underwent medical examinations with three different medical doctors, all of whom confirmed that he had certain injuries on his body and one of whom confirmed that these injuries could have been caused at the time, and in the manner described by the complainant.[b] According to the complainant, one of the doctors in question stated that he had been "advised" by the Regional Police Directorate not to provide a medical report for him. On 4 April 2003, the complainant complained about the assault to the Regional Military Prosecutor's Office in Plovdiv,[c] which investigated his claim. On 23 September 2003, the Plovdiv Military Deputy-Prosecutor found that although a "slight physical injury" had been caused to the complainant, the police officers concerned had acted lawfully. The criminal case was then closed. On 13 November 2003, the complainant appealed against this decision to the Military Court of Plovdiv, claiming that it was unfounded and beset by procedural irregularities.[d] On 24 November 2003, the Military Court confirmed the Prosecutor's decision. The complainant submits that he has exhausted domestic remedies, as due to a legislative change in 2003 it is no longer possible to appeal such rulings to the Supreme Court.

The complaint

3. The complainant claims that the treatment he received at the hands of the police, and for which the State party authorities failed to provide him with redress, amounted to violations of article 1, paragraph 1; articles 10; 11; 12; and 16, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

State party's observations on admissibility

4.1 On 30 November 2004, the State party provided its observations and submitted that the complaint was inadmissible as: (a) the complainant has failed to exhaust domestic remedies; and (b) the actions of the police officers do not qualify as "torture", within the meaning of article 1, paragraph 1, of the Convention. It contended that according to article 359 of the Criminal Procedure Code (CPC), final judgements were subject to verification and that criminal cases can be reopened on grounds listed in article 362 of the CPC. It acknowledged the complainant's argument that until 30 May 2003, the Criminal Procedure Code allowed appeals against rulings of the Regional Military

Court before the Supreme Court, but that this possibility was eliminated by an amendment of the Criminal Code. By virtue of article 237, paragraph 4, Criminal Code, the decision of the Plovdiv Regional Military Court was final and not subject to appeal. However, it stated that after 30 May 2003 such rulings became subject to review within the terms of Chapter XVIII CPC (Reopening of Criminal Cases). Accordingly, the complainant could have requested the Military Prosecutor or the Prosecutor-General to review the judgement, after which either one of them could have requested the Supreme Court to reopen the case. According to the State party, the complainant had failed to avail of this remedy and had thus failed to exhaust domestic remedies.

4.2 The State party submitted that the actions of the police officers against the complainant do not qualify as "torture" within the meaning of article 1 of the Convention. It submitted:

(a) That the police officers did not act with the *intention* of inflicting severe pain or suffering on the complainant for any of the purposes defined in the first sentence of article 1, paragraph 1 of the Convention. According to the State party, the documents submitted by the complainant demonstrate that the officers acted in compliance with article 78, paragraph 1 (1) and (2), of the Law on the Ministry of Interior, which "authorises the use of physical force and other means for police officers if their duties cannot be exercised by other means and in cases of resistance or refusal of an individual to comply with a lawful order";

(b) That the actions of the police officers fall under the definition of the second sentence of article 1, paragraph 1 of the Convention, according to which the pain or suffering endured by the complainant arose "only from, inherent in or incidental to lawful sanctions". For the State party, the material submitted by the complainant demonstrated that the police actions amounted to such lawful actions. Consequently, any pain or suffering that may have been caused to the complainant is not of the type defined in paragraph 1 of the Convention;

4.3 The State party observed that the complainant was found guilty of hooliganism (article 325, paragraph 2,[e] of the CPC) and for damaging property (police car under article 216[f] of the CPC), by three consecutive instances. At first instance on 11 November 2003, upon appeal on 16 February 2004 and by the Supreme Court on 2 November 2004. In light of his behaviour, the State party concluded that "it is evident that the police officers had to apply lawful measures against the complainant in order to interrupt his hooliganism".

Complainant's comments

5. On 4 January 2005, the complainant contested the State party's argument that he had not exhausted domestic remedies. He provided a copy of his request for review under article 362 of the CPC to the Prosecutor General of 25 March 2004, as well as a copy of the reply of 26 May 2004 signed by the Prosecutor General of the Supreme Prosecution Office. The prosecutor had concluded that the failure to examine certain witnesses had not resulted in a prejudiced or incomplete investigation. The complainant further argued that it was clear from the Supreme Court judgement of 2 November 2004, which affirmed his conviction for hooliganism, that this judgment was final and not subject to appeal. He stated that he was considering the possibility of filing an application for

violation of his right to a fair trial with the European Court of Human Rights (based on article 6 of the European Convention of Human Rights).

Decision of the Committee on admissibility

6.1 The Committee examined the admissibility of the communication during its thirty-sixth session, in May 2006. It ascertained, as required under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being considered under another procedure of international investigation or settlement. It noted that in April 2005, the complainant had submitted an application to the European Court of Human Rights, registered before the Court as Case No. 17720/05, and that in substance, this application related to the same facts (use of force by police officers against the complainant). The application was, however, still pending and had not been transmitted to the State party. In these circumstances, the Committee considered that the above application could not be seen as "being" or "having been" considered under another procedure of international investigation or settlement, within the meaning of article 22, paragraph 5 (a), of the Convention. Therefore, it was not precluded by this provision from examining the communication.

6.2 On the requirement of exhaustion of domestic remedies, the Committee noted that the State party had challenged the admissibility of the complaint on the grounds that all available and effective domestic remedies had not been exhausted. However, it also noted that the complainant responded that he had made a request for review to the Prosecutor-General who rejected his request, and he had provided proof of this request as well as the Prosecutor-General's decision. In these circumstances, and taking into account that no additional information was adduced by the State party to support its argument, the Committee concluded that it was not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the communication.

6.3 The Committee noted the complainant's allegations that the police officials used disproportionate force against him and that he was unable to obtain redress within the State party. It also noted the State party's contention that the police officers in question had acted lawfully, within their competencies defined by the Law on the Ministry of Interior, and that their acts do not constitute "torture" within the meaning of article 1, paragraph 1, of the Convention. The Committee considered however, that this claim had been sufficiently substantiated, for purposes of admissibility. The Committee concluded that the communication was admissible and invited the State party to present its observations on the merits.

State party's observations on the merits

7.1 On 27 February 2008, the State party provided its submission on the merits. It disputes the facts as recounted by the complainant and submits that having fallen asleep on one of the tables in the lobby of the Murgavets hotel the complainant was woken up twice by hotel personnel and asked to leave. He refused to leave and became violent, hitting tables and chairs and throwing down ashtrays. For this reason, the police were called. Two police officers arrived and asked him to show his identity card. He refused and became violent uttering curses, using offensive language and violently resisting the police officer's attempts to remove him from the hotel. They had to use necessary force to restrain him in compliance with article 78, paragraph 1, subparagraphs 1 and 2, of the Law on the Ministry of Interior. The complainant was handcuffed, led out to the hotel and ordered to get into the patrol car. As he again resisted violently, necessary force was used to put him in the car, whereupon he was taken to the police station. He continued to behave aggressively in the car. In light of his behaviour, the police drew up a statement of the incident, in accordance with the Decree on Combating Petty Hooliganism. The complainant refused to sign it and scribbled all over it. The police officers reported the case to the Regional Police Directorate of Chepelare from which they received instructions to transport the complainant to the same Directorate. While being driven from the police station to the Regional Police Directorate, the complainant again tried to resist violently, inter alia, breaking the windshield of the police car in the process, and had to be restrained.

7.2 The complainant was apprehended for 24 hours at the Regional Police Directorate of Chepelare, where he asked for a doctor and was examined by one prior to being taken to the detention facility. The examining doctor established that he was in a highly agitated state, smelled distinctly of alcohol, shouted and used offensive language. He refused the offer of the administration of a tranquilizing injection. As to his physical examination, the doctor confirmed that the complainant "did not have any marks of bodily harm on his face and head". On 5 February 2003 at about 12 noon, the complainant was released. He was later charged and found guilty of hooliganism by a judgement of the Chepelare District Court. The Court considered the medical reports produced by the complainant which, according to the State party, concluded that he had suffered a "slight physical injury".

7.3 On the merits, the State party reiterates its arguments provided on admissibility and maintains its position that it did not violate any of the complainant's rights. As to the claims of violations of articles 10 and 11, the State party submits that neither of these claims has been substantiated by the complainant. In any event, it provides detailed information on how it has implemented both articles, including the provision of information submitted to the Committee in the context of the consideration of its third periodic report to the Committee in 2004. The State party submits that it was in the context of systematic reviews of its interrogation rules, instructions, methods and practices etc. that it issued two documents in 2003, on the procedure to be followed by the police upon detaining an individual and another on the Code of Conduct of policemen. Similarly, the State party contests the claim under article 12, and sets out the sequence of appeals made by the complainant to demonstrate that its authorities did conduct a prompt and impartial investigation. As to article 16, the State party reiterates its arguments made in relation to the admissibility of the complaint with respect to article 1. It refers to its version of the facts, including the author's violent behaviour upon being asked to leave the hotel, his resistance to arrest and the damage he did to the police car. It argues that he was found guilty by three instances in the State party and reiterates that the officers in question acted lawfully within the meaning of article 78, paragraph 1, subparagraph 2, of the Law on the Ministry of Interior.

Complainant's comments

8. On 27 March 2008, the complainant commented on the State party's submission. He submits that he remained in handcuffs with chains on his legs from 6 a.m. to 10 a.m. and was subsequently detained for 30 hours in a "cage" while handcuffed. He argues that he could not have damaged the police car in which he was driven to prison, as he was handcuffed and had chains on his legs all the

time. He submits that only the statements of the two police officers in question were taken on board by the domestic authorities and that even the forensic medical certificate was not taken seriously. Although the certificate was attested to by three doctors, and contains evidence of a large number of injuries, as well as bruising to his kidneys and blood in his urine, it was regarded by the court and is regarded by the State party as merely demonstrating a "slight physical injury".

Issues and proceedings before the Committee

Consideration of the merits

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

9.2 The Committee notes the claim that the complainant was subjected to torture, as defined by article 1, paragraph 1, and/or cruel, inhuman or degrading treatment or punishment, as defined by article 16, paragraph 1, of the Convention. It notes that the exact circumstances of the arrest and intensity of the force used against the complainant are disputed by the parties but that the medical reports were assessed by the domestic courts as demonstrating a "slight physical injury" to the complainant. It observes that, according to the decision of 23 September 2003, the doctor who examined the complainant in prison immediately after his arrest testified to having found no bruising on the complainant's face, head or arms, which appears to be contradicted by the medical reports subsequently produced. The State party adopts the courts' interpretation of the medical reports that the injuries caused were slight and arose from the lawful use of necessary force, in accordance with article 78, paragraph 1, subparagraphs 1 and 2, of the Law on the Ministry of the Interior.

9.3 From a review of the medical reports themselves, the Committee observes that the complainant suffered multiple bruising on various external parts of his body, to the extent that the injuries inflicted caused bruising to his kidneys and blood in his urine. In addition, the forensic medical report, of 12 July 2003, ordered by the State party's authorities themselves for the purposes of the investigation, attests to the injuries described in the two earlier medical reports and gives the view that these injuries could have arisen at the time of and in the manner described by the complainant. It also observes that the medical reports themselves do not refer to a "slight physical injury" but that this is the domestic court's interpretation. While recognizing that pain and suffering may arise from a lawful arrest of an uncooperative and/or violent individual, the Committee considers that the use of force in such circumstances should be limited to what is necessary and proportionate. The State party argues that the force used was "necessary", and states that the complainant had to be handcuffed, however it does not describe the type of force used nor say whether and/or how it was proportionate, i.e. how the intensity of the force used was necessary in the particular circumstances of the case. The Committee considers the complainant's injuries too great to correspond to the use of proportionate force by two police officers, particularly as it would appear that the complainant was unarmed. It cannot agree with the domestic courts' interpretation that the complainant suffered from a "slight physical injury", as a result of the force inflicted upon him. While noting, on the basis of the evidence provided, that the injuries inflicted do not appear to amount to "severe pain and suffering", within the meaning of article 1, paragraph 1, it does consider that the treatment of the complainant by the police officials amounts to acts of cruel, inhuman or degrading treatment or punishment within the terms of article 16 of the Convention.

9.4 As to the claim of a violation of article 12, while noting that the State party did conduct a prompt investigation into the incident in question, an investigation in itself is not sufficient to demonstrate the State party's conformity with its obligations under this provision if it can be shown not to have been conducted impartially. In this regard, the Committee notes the claims, uncontested by the State party, that one of the doctors in question had been requested by the police authorities not to provide the complainant with a medical report and that the Prosecutor had failed to summon certain witnesses. It also notes that the Prosecutor's office arrived at the same interpretation of the medical reports as the domestic courts themselves, to the extent that the complainant had suffered from a "slight physical injury", an interpretation already contested by the Committee in its finding of a violation of article 16 above. For these reasons, the Committee considers that the State party has also violated article 12 of the Convention.

9.5 As to the claims of violations of articles 10 and 11, the Committee notes that the complainant has failed to provide any arguments or information to substantiate such claims and thus is not in a position to making any finding with respect to the rights protected therein.

10. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose violations of articles 12, and 16, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to provide an effective remedy to the complainant, including fair and adequate compensation for the suffering inflicted, in line with the Committee's general comment No. 2, as well as medical rehabilitation, and to inform it within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

Notes

[a] From the documents submitted it transpires that the individuals in question were both hotel employees.

[b] Copies of medical reports are provided: 1. Report dated 5 February 2003, referring to the results of an ultrasound, "Kidneys - normal size; slight changes in the parenchyma zones and the calyxes showing contusion more on the right kidney. The rest parenchyma organs - without peculiarities. There are no free liquids into the abdomen"; 2. Report dated 5 February 2003, which states "Trauma of the iliac zone, concussion of the kidney to the right. Erizthrocytoria"; 3. Medical-forensic report, dated 12 July 2003, following a medical-forensic assessment ordered by the investigation. The doctor made the following conclusion based on the two medical reports mentioned above as well as on his own examination. "Trauma of the right iliac zone; concussion of the kidney on the right; available blood in the urine; a blood on the skin of the left armpit, as well as the left and right thigh and along the back (right iliac zone), a worn out on the skin of the left cochlea; a worn out on the skin of both wrists, and a traumatic oedema on the back of the right palm. The above-mentioned traumas were

caused by either a hit, to close pressing against a hard blunt object; it is possible to be caused within the same time and in the same way, the witnesses declared in their evidence."

[c] In relation to this claim, the case file contains copies of "Minutes of an Examination of witness", during which two witnesses explained on 8 July 2003 what they had witnessed in the morning of 4 February 2003.

[d] The complainant states that the Martial Court in Plovdiv accepted as an established fact, without verification, that he was drunk at the time of the incident, and that he hit tables and armchairs in the lobby bar, and threw down ash-trays "thus disturbing the public order".

[e] According to the State party, article 325 (2) reads as follows: "Where the act has occurred with resistance to a body of authority or a representative of the public, fulfilling their obligations of preserving the public order, or where by its content it has been distinguished for its extreme cynicism or arrogance, the punishment shall be deprivation of liberty for up to five years."

[f] According to the State party, article 216 (1) reads as follows: "A person who unlawfully destroys or damages movable or real property belonging to somebody else, shall be punished by deprivation of liberty for up to five years."

Communication No. 261/2005

Submitted by:	Mr. Besim Osmani (represented by counsel, the Humanitarian Law Center, Minority Rights Center and the European Roma Rights Center)
Alleged victim:	The complainant
State party:	Republic of Serbia
Date of complaint:	17 December 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2009,

Having concluded its consideration of complaint No. 261/2005, submitted to the Committee against Torture on behalf of Mr. Besim Osmani under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant is Mr. Besim Osmani, a citizen of the Republic of Serbia of Roma origin, born in 1967, and residing in the Republic of Serbia. He claims to be a victim of violations of article 16, paragraph 1, read separately or in conjunction with articles 12 and 13, and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Republic of Serbia. He is represented by three non-governmental organizations: the Humanitarian Law Center (HLC), Minority Rights Center (MRC), both based in Belgrade and by the European Roma Rights Center (ERRC), based in Budapest.

Factual background

2.1 The complainant was one of the 107 Roma inhabitants of the "Antena" Roma settlement situated in New Belgrade (Novi Beograd), Municipality of Belgrade. The settlement existed since 1962. Four families resided there permanently, while the majority of its inhabitants were displaced Roma from Kosovo, who moved into the settlement in 1999 after their property in Kosovo was destroyed. On 6 June 2000, the "Antena" inhabitants were notified in writing by the Municipality of New Belgrade of its decision of 29 May 2000 to demolish the settlement, and that they should vacate the area by the following evening.[a] The inhabitants did not contest the Municipality's decision but being very poor and unable to find another place to live at short notice, they did not leave. On 8 June 2000, at approximately 10 a.m., representatives of the Municipality of New Belgrade and a group of some 10 uniformed policemen arrived at the settlement in order to execute the eviction order. Shortly after the bulldozers started demolishing the settlement, a group of five to six plainclothes policemen, all of whom, with the exception of the van driver who wore a white suit, were dressed in black, arrived at the scene in a blue Iveco cargo van with a police license plate number BG 611-542.[b] They did not produce any identification documents and were not wearing any insignias. In the course of the eviction, the plainclothes policemen hit a number of the Roma while the uniformed policemen abused them with racist language. The complainant was twice slapped and hit with fists in the head and in the kidneys by a plainclothes officer who was gripping the complainant's left arm, while the latter was holding his 4 year old son with the right arm. The child was also hit but did not sustain serious injury. The complainant fled the settlement and sought medical treatment for his injuries. The medical certificates of 12 June 2000 stated that he had a haematoma under his left arm and he was advised to see a specialist for an examination of his abdomen.

2.2 As a result of this operation, the complainant's home and personal belongings, including a mini van, were completely destroyed and he was left homeless together with his wife and three minor children. The first six months after the incident, the complainant and his family lived in a tent on the site of the destroyed settlement. As of 2002, they have lived in the basement of a building where the complainant works on the heating system and maintenance.

2.3 On 12 August 2000, the HLC filed a complaint supported, among others, by five witness statements with the Fourth Municipal Public Prosecutor of Belgrade claiming that the complainant's mistreatment by unidentified perpetrators and the conduct of the police in the course of the settlement's demolition breached article 54 (causing light bodily injury) and article 66 (abuse of authority) of the Criminal Code.

2.4 According to article 19, paragraph 1, of the Criminal Procedure Code of the Republic of Serbia (CPC), formal criminal proceedings can be instituted at the request of an authorized prosecutor, that is, either the public prosecutor or the victim. All criminal offences established by law are prosecuted *ex officio* by the state through the public prosecutor service, unless the law explicitly states otherwise, which is not the case as far as articles 54 and 66 of the Criminal Code are concerned. According to articles 241, paragraph 1, and 242, paragraph 3, of the CPC, a formal judicial investigation can only be undertaken against an individual, whose identity has been established. When the identity of the alleged perpetrator of a criminal offence is unknown, the public prosecutor can request the necessary information and/or take the necessary steps in order to identify the individual(s) at issue. According to article 239, paragraph 1, of the CPC, the prosecutor may exercise this authority through the law enforcement agencies or with the assistance of the investigating judge. If the public prosecutor finds, based on the totality of evidence, that there is reasonable doubt that a certain person has committed a criminal offence prosecuted *ex officio*, he requests the investigating judge to institute a formal judicial investigation in accordance with articles 241 and 242 of the CPC. On the other hand, if the public prosecutor decides that there is no basis for the institution of a formal judicial investigation, he must inform the complainant/victim of this decision, who can then exercise his/her prerogative to take over the prosecution of the case on his/her own behalf - that is, in the capacity of a "private prosecutor" as provided by article 61, paragraphs 1 and 2, and article 235, paragraph 1, of the CPC.

2.5 On 10 April 2001, in the absence of a reply from the Public Prosecutor's Office, HLC sent a request for information concerning the investigation to the Fourth Municipal Public Prosecutor. In a letter dated 19 April 2001 and received on 16 May 2001, HLC was informed that the complaint had been rejected, as there was no reasonable doubt that any criminal acts subject to official prosecution had been committed. No information was provided about the steps taken by the Public Prosecutor's Office to investigate the complaint. The victim's representative was advised, in accordance with article 60, paragraph 2,[c] of the CPC, to take over the prosecution of the case before the Municipal Court of Belgrade within eight days. To that end, the victim's representative was invited to submit either a proposal to the investigating judge to conduct the investigation against an unidentified perpetrator or a personal indictment against the officials for the crimes proscribed by articles 54 and 66 of the Serbian Criminal Code. The Deputy Public Prosecutor listed the names of four members of the Department of Internal Affairs of New Belgrade who provided assistance to the Department of Civil Engineering and Communal Housing Affairs in carrying out the eviction and demolition: Sergeant Major B., Staff Sergeants A. and N., and Master Sergeant J. However, the letter did not mention the names of the plainclothes policemen who participated in the eviction, thus preventing the complainant from formally taking over the prosecution of the case.

2.6 On 23 May 2001, HLC filed a request before the Fourth Municipal Court of Belgrade to reopen the investigation into the matter. To help identify the perpetrators, HLC requested the Court to hear, in addition to the Roma witnesses, the policemen named in the Deputy Public Prosecutor's letter of 19 April 2001, as well as the representatives of the Department of Civil Engineering and Communal Housing Affairs who had been present on 8 June 2000.

2.7 Between 25 December 2001 and 10 April 2002, the four uniformed policemen were heard by the investigating judge, making contradictory statements regarding the police's participation in the demolition of the "Antena" settlement. Master Sergeant J. stated that due to the number of the settlement's inhabitants and their reluctance to vacate the settlement, the group of policemen called for additional assistance and soon a vehicle with five or six colleagues in plainclothes from the Police Station of New Belgrade arrived at the scene.[d] Sergeant Major B., who was the commander of the Bezanija Police Department,[e] stated that police support was provided at two locations in the settlement and that no plainclothes policemen were present at his location. Sergeant A. declared that he was present at the destruction of the settlement but did not see any violence taking place. He did not recall whether the other Ministry of Internal Affairs' officers, other than those from the Bezanija Police Department, were present at the scene and stated that, as a rule, assistance is provided by the uniformed rather than by plainclothes policemen. Sergeant N. stated that he did not participate in this operation. None of the policemen who were present during the eviction and demolition of the "Antena" settlement, could remember the names of the colleagues or subordinates who also took part in it.

2.8 On 17 May 2002, the investigating judge heard the complainant. His testimony was supported by the statements of the other two inhabitants of the settlement who were also heard as witnesses by the investigating judge. All of them stated that they would be able to recognize the plainclothes policemen who hit them.

2.9 On 4 June 2002, in reply to the investigating judge's request for information on the policemen present at the eviction and demolition of the "Antena" settlement, the Department of Internal Affairs of New Belgrade stated that the execution of the decision of the New Belgrade Municipality started on 7 June 2000. On that day, police officials J., O. and T. visited the settlement and requested the inhabitants to start evacuating their homes. The operation continued the next day by the Sergeants A. and N. together with the Commander B.

2.10 On 17 July 2002, the investigating judge interviewed P., one of the Building Construction inspectors present during the operation. He stated that the "Antena" inhabitants had been aware of the plan to demolish their settlement a month before the actual demolition was to take place and that on 7 June 2000 they had been given a last 24 hours vacation notice. On 8 June 2000, the "Antena" inhabitants gathered at the settlement and it seemed to him that they had brought Roma from other settlements to prevent the demolition. Building Construction inspectors requested assistance from the Bezanija Police Department, which sent to the settlement uniformed and plainclothes policemen. The witness confirmed that a few kicks and slaps in the faces of the Roma inhabitants had taken place but stated that he did not recall that truncheons were used on them. He declared, however, that the plainclothes policemen did not interfere in the conflict; they were taking a Roma resisting the settlement's demolition into police custody. He further stated that the demolition did not proceed before the inhabitants took their belongings out of the barracks.[f]

2.11 On 12 September 2002, the Fourth Municipal Court of Belgrade informed the HLC[g] that the investigation had been concluded and that, according to the provisions of article 259, paragraph 3, of the CPC, the victims' representative could lodge an indictment in the case[h] within 15 days or otherwise it would be deemed that they have waived the prosecution.

2.12 On 2 October 2002, the complainant's and the other victims' representative filed a new request to supplement the investigation with the Fourth Municipal Court of Belgrade, in accordance with the procedure established by article 259, paragraph 1, of the CPC. The motion stated that, in breach of article 255 of the CPC, the investigating judge did not provide the parties with the names of the plainclothes policemen and therefore, they were unable to formally take over the prosecution of the case. It was proposed, *inter alia*, that the court conduct a new hearing of Master Sergeant J. and that it resend a request to the Department of Internal Affairs of New Belgrade to provide information on the identity of the plainclothes policeman involved in the incident.

2.13 On 6 November 2002, in response to this request, the Fourth Municipal Court of Belgrade sent an inquiry to the Department of Internal Affairs of New Belgrade regarding the names of the Department's officers who provided assistance to the Municipality of New Belgrade and to the Bezanija Police Department but indicated by mistake an erroneous date for the incident, that is, 8 June 2002. As a result, the Department of Internal Affairs replied on 20 November 2002 that it had not provided any assistance to the above-mentioned bodies on the said date. On 22 November 2002, a second similar request was sent to the Department of Internal Affairs by the Fourth Municipal Court of Belgrade. This time, the letter did not mention the date of the incident but required the names of the plainclothes policemen who had assisted the policemen from the Bezanija Police Department during the destruction of the "Antena" settlement. On 4 December 2002, Master Sergeant J. replied that he did not know the names of the plainclothes policemen who intervened during the destruction of the "Antena" settlement but he did not deny that such intervention occurred. Also, on 13 November 2002, Master Sergeant J. was re-interviewed by the Court. He repeated his previous statement adding that "(...) if necessary, I could try to find out precisely which police officers were present and inform the court about it".

2.14 On 26 December 2002, the Fourth Municipal Court of Belgrade informed the victims' representative that the investigation has been concluded and recalled that, according to the provisions of article 259, paragraph 3, of the CPC, the victims' representative could lodge an indictment in the case within 15 days. Otherwise it would be deemed that they had waived the prosecution.

2.15 On 10 January 2003, the victims' representative notified the Court that the involvement of the plainclothes policemen in the physical abuse of Roma on 8 June 2000 was clearly supported by the victims' statements, as well as by the witnesses P. and Master Sergeant J. and requested the Court to continue its investigation until the perpetrators had been identified. On 6 February 2003, the Department of Internal Affairs of New Belgrade, in response to a third request from the Court dated 30 January 2003, sent a letter providing the names of two officers G. and A., who had provided assistance during the incident of 8 June 2000.

2.16 On 25 March 2003, HLC sent a letter of concern to the Minister of Internal Affairs, complaining about the lack of cooperation of the Department of Internal Affairs of New Belgrade in the investigation and asking the Minister to disclose the names of the plainclothes policemen who provided assistance during the incident of 8 June 2000 at the "Antena" settlement in New Belgrade.

2.17 On 8 April 2003, the Court interviewed policemen G., who stated that he was not present at the destruction of "Antena" settlement and had no direct knowledge of the incident of 8 June 2000. He confirmed that, as a rule, assistance in such situations was provided by the uniformed rather than by plainclothes policemen but, in emergencies, policemen in plainclothes could be dispatched. He further stated that the names of the policemen assigned to different tasks were kept in a registry in the police department. Should the Court require such information, it would receive a report based on the information contained in the registry.

2.18 By letter dated 6 May 2003,[i] the victims' representative was again informed that the investigation has been terminated by the Fourth Municipal Court of Belgrade and that he could lodge an indictment within 15 days to proceed with the criminal prosecution in the case. However, once again, the perpetrators were not identified by name. On 27 May 2003, the representative requested the Court not to finalize the investigation in the case until the Ministry of Internal Affairs had sent its response to HLC's request that it provide the names of the plainclothes policemen involved in the incident. On 3 June 2003, HLC sent a reminder to the Ministry of Internal Affairs. On 20 June 2003, an adviser to the Minister of Interior informed HLC that the criminal investigation conducted by the Fourth Municipal Court of Belgrade was not able to confirm the participation of plainclothes policemen in the incident of 8 June 2000. The letter concluded that, upon the request of the Court, the Secretariat of Belgrade[j] should present all required information regarding the conduct of the policemen.

2.19 On 20 December 2003, the victims' representative was notified for the fourth time that the Court had concluded the investigation in the case and was invited to lodge the indictment within 15 days. As before, the names of the perpetrators were not identified, thus making it impossible for the victims to formally take over the prosecution of the case.

2.20 Pursuant to domestic law, the complainant had two different procedures for seeking compensation: (1) criminal proceedings, under article 201 of the CPC, which should have been instituted on the basis of his criminal complaint, or (2) a civil action for damages under articles 154 and 200 of the Serbian Law on Obligations. Since the prosecutor failed to identify the perpetrators and no formal criminal proceedings were instituted by Fourth Municipal Public Prosecutor of Belgrade, the first avenue remained closed. Concerning the second avenue, the complainant did not file a civil action for compensation given that it is standard practice of the Serbian courts to suspend civil cases for damages arising out of criminal offences until prior completion of the respective criminal proceedings.

2.21 Had the complainant decided to sue for damages immediately following the incident, he would have faced another procedural impediment. Articles 186 and 106 of the CPC require that both parties to a civil action - the plaintiff and the respondent alike - be identified by name, address and other relevant personal data. Since the complainant was unable to provide this information, instituting civil action for compensation would clearly have been procedurally impossible and would have been rejected by the civil court out of hand.

The complaint

3.1 The complainant submits that the State party has violated article 16, paragraph 1, read separately or in conjunction with articles 12 and 13; and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention.

3.2 With regard to exhaustion of domestic remedies, the complainant submits that international law does not require that a victim pursue more than one of a number of remedies which may be capable of redressing the violations alleged. Where there is a choice of effective and sufficient remedies, it is up to the complainant to select one. Thus, having unsuccessfully exhausted one remedy, a complainant "cannot be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success".[k] The complainant refers to the jurisprudence of the European Commission which held that where domestic law affords both civil and criminal remedies for treatment allegedly contrary to article 3 of the European Convention on Human Rights, a complainant who initiated criminal proceedings against a police officer allegedly responsible need not also have filed a civil action for compensation.[l] Moreover, the complainant submits that only a criminal remedy would be effective in the instant case; civil and/or administrative remedies do not provide sufficient redress.

3.3 The complainant claims that he was subjected to acts of cruel, inhuman and degrading treatment and punishment by state officials, in violation of article 16. He submits that the assessment of the level of ill-treatment depends, inter alia, on the vulnerability of the victim and should thus also take into account the sex, age, state of health or ethnicity of the victim. The level of ill-treatment required to be "degrading" depends, in part, on the vulnerability of the victim to physical or emotional suffering. The complainant's association with a minority group historically subjected to discrimination and prejudice[m] renders the victim more vulnerable to ill-treatment for the purposes of article 16, paragraph 1, particularly where, as in the Republic of Serbia, law enforcement bodies have consistently failed to address systematic patterns of violence and discrimination against Roma. He suggests that a "given level of physical abuse is more likely to constitute 'degrading or inhuman treatment or punishment' when motivated by racial animus and/or coupled with racial epithets".

3.4 The complainant submits that in violation of article 12, read in conjunction with article 16, paragraph 1, of the Convention, the Serbian authorities failed to conduct a prompt, impartial, and comprehensive investigation into the incident at issue, capable of leading to the identification and punishment of those responsible, despite reasonable grounds to believe that an act of cruel, inhuman and degrading treatment or punishment had been. He refers to the Committee's findings in *Abad v. Spain* that "under article 12 of the Convention, the authorities have the obligation to proceed to an investigation ex officio, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion." The Committee also found that "a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein".[n] In order to comply with the requirements of article 12, read in conjunction with article 16, paragraph 1, the State party's authorities had to conduct not a pro forma investigation but an investigation capable of leading to the identification and punishment of those responsible. Following the Deputy Public Prosecutor's decision of 19 April 2001 to terminate the investigation, as prescribed by law, the victim had the right to take over the prosecution of the case and finally lodge the indictment. However, the failure of the prosecutor and the investigating judge to identify the perpetrators prevented the complainant from exercising this right.

3.5 The complainant also alleges a violation of article 13, read in conjunction with article 16, paragraph 1, because his right to complain and to have his case promptly and impartially examined by the competent authorities was violated. He submits that the 'right to complain' implies not just a legal possibility to do so but also the right to an effective remedy for the harm suffered.

3.6 The complainant finally invokes a violation of article 14, read together with article 16, paragraph 1, because of the absence of redress and of fair and adequate compensation. He refers to the European Court of Human Rights jurisprudence on the interpretation of the term "effective remedies" that should be afforded at the domestic level, stating that whenever an individual has an arguable claim that he has been subjected to inhuman or degrading treatment by the police or such agents of the state, the notion of an effective remedy entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible.[o]

The State party's observations on admissibility and merits

4.1 In a submission dated 23 May 2005, the State party challenged the complainant's claim that the Fourth Municipal Public Prosecutor did not take any steps in response to the complaint submitted by the HLC on 12 August 2000 until 19 April 2001. The State party submitted that according to the case file available with the Fourth Municipal Public Prosecutor and an interview with the Deputy Case prosecutor, HLC's complaint was received on 15 August 2000. On 18 August 2000, the Prosecutor requested the Department of Internal Affairs of New Belgrade to provide information "on persons who assisted the Department of Civil Engineering and Communal Housing Affairs of New Belgrade in the demolition, on whether force was used, including which type and manner and for what reasons it was used, whether residents resisted the implementation of the decision of the Department".

4.2 On 9 November 2000, the Prosecutor received a report from the Secretariat of Internal Affairs of Belgrade, Internal Affairs Control Section. On 23 November 2000, the Prosecutor requested the Secretariat to return to him the original complaint, which was forwarded by the former on 13 February 2001. According to the report, on 7 June 2000, officers of the Bezanija Police Department visited the settlement and noted that the inhabitants were packing up slowly, dismantling their dwellings and looking for a new place to live. Accordingly, there was no police intervention against the inhabitants on that date. On 8 June 2000, the municipal administration authorities "demolished illegally built dwellings (…) which took place without disturbance of public peace and order. The police provided assistance, (…) but the assistance consisted of physical presence, short of taking any measure or form of intervention, either before or after the demolition of the dwellings".

4.3 On 19 February 2001, the Prosecutor decided to reject the complaint under article 153, paragraph 4, in connection with paragraph 2 of the Criminal Procedure Law (CPL). According to article 45, paragraph 2, subparagraph 1, of the CPL that was in force at that time, the Prosecutor was empowered to take the necessary measures to uncover criminal offences and to identify alleged perpetrators. Article 46, paragraph 2, subparagraph 1, of the CPC that subsequently entered into force makes the Prosecutor responsible for pretrial procedure. The State party concludes that under the CPL, the Prosecutor had very limited powers in the pretrial procedure and had to rely on the Ministry of Internal Affairs. According to the Ministry's report, there were no illegal activities in the case in question and taking into account the procedure for obtaining the evidence under the CPL, the Prosecutor correctly found that there was no reasonable doubt that a criminal offence under article 66 of the CPL, or any other offence prosecuted *ex officio* had been committed.

4.4 On 19 April 2001, the above decision with a remedy in the sense of article 60, paragraph 2, of the CPL was forwarded to the HLC. In this regard, the State party submits that the CPL and the CPC clearly distinguish between the complainant and the injured party. Only the injured party has the right, in the sense of article 60, paragraph 2, of the CPL and article 61, paragraph 2, of the CPC to take over criminal prosecution if the Prosecutor rejects the complaint. In this situation, the injured party has the right of the Prosecutor and not that of a private complainant. Since the HLC filed the complaint without submitting the full powers of attorney of the injured party represented in this case, the Prosecutor could not inform the HLC of the rejection of the complaint. Moreover, the injured party, the complainant, could not be informed either, since after the settlement's demolition, his address was no longer valid and no alternative address was provided. It was only after the HLC submitted the full powers on 13 April 2001 that the Prosecutor informed the organization, within the shortest possible time, of the rejection of the complaint and rendered detailed advice on the remedy.

4.5 In 2000 and 2001, the only independent authority to control the legality of the work of the Ministry of Internal Affairs was the Internal Affairs Control Section. It investigated all cases in which force was used and carried out internal control on the basis of complaints of serious misconduct and/or reports of excessive use of force. This Section has been transformed in the meantime into the post of the General Inspector of the Public Security Department.

4.6 With regard to the complainant's and other victims' statement that they would be able to recognize the plainclothes policemen who hit them should they be given this opportunity, the State party submits that "while a witness statement constitutes evidence, identification is only one measure to establish its authenticity." Since the Internal Affairs Control Section concluded that the Ministry of Internal Affairs officers acted in full compliance with the law, the Prosecutor could not request identity parade as it would have been superfluous. In any event, the injured party taking over the prosecution has the right to request action to determine identification during the proceedings.

4.7 The State party further submitted that the Court had difficulties in subpoenaing the injured parties, since the HLC failed to provide their proper addresses. As a result, the Court was able to subpoena the witnesses only on 7 May 2002 and so heard them almost a year after the prosecution was taken over by the injured party. The State party referred to the statement made by one of the "Antena" inhabitants, before the investigating judge of the Fourth Municipal Court of Belgrade where he indicated, inter alia, that "these individuals did not have any insignia and wore civilian clothes and used only their arms and legs during the attack on the settlement's residents." He added that his son was pushed by a truncheon when the latter bowed to pick up his cell phone from the ground and that "the police officer did it to move him away from the melee, as my son risked to be hit, felled and run over." Sergeant Major B., an officer of the Department of Internal Affairs of New Belgrade testified in January 2002 that "the residents (…) booed us and protested the demolition (…)." In addition to Sergeant J.'s testimony of 10 April 2002 quoted by the complainant,[p] the State party referred to a part of his statement where he explained that several attempts have been made to serve demolition decisions on the settlement's residents. On 8 June 2000, the residents "refused to move, the police tried to talk them into it but they would not listen." He recalled that the plainclothes policemen who arrived at the scene used the truncheons on the most reluctant inhabitants who had lain down in front of the bulldozers to prevent the demolition, but did not remember who was using the truncheons and on whom. He further recalled that no one insulted, kicked or hit the Roma with the fists. The physical contact was limited to holding the inhabitants by the arm to drag them away from the area; one or two of them were ultimately arrested and taken into custody to the Bezanija Police Department. As for the Building Construction inspector's testimony referred to by the complainant,[q] the State party refers to a part of his statement where he mentioned that "(…) the police officer from the Bezanija Police Station that assisted us tried to solve the problem with the Roma peacefully and, really I cannot remember now if insults were exchanged between them."

4.8 The State party concluded that the facts mentioned above prove that on the day in question the police tried to act in accordance with the standards governing the intervention against a large number of people and endeavoured to apply force discriminately. In particular, they tried to use a two-pronged approach to protesters: the policemen showed maximum respect towards those who offered passive resistance and carried them away, while a number of protesters offered active resistance to policemen in implementing the planned intervention and encouraged individual Roma to oppose the police, provoking physical contact with the police in which the policemen were compelled to apply physical force by using truncheon and by hitting and kicking protesters in order to remove them.

4.9 Further, the State party provided extensive information on existing legal avenues available to the injured party to exercise its right to compensation through the institution of criminal, civil and administrative proceedings. It claims that by filing a claim for compensation under article 172 of the Contracts and Torts Law, the complainant could have prosecuted the Republic of Serbia and the Ministry of Internal Affairs in a civil lawsuit. It is not necessary to establish the names of all individuals who caused the damage in order to institute and conduct these proceedings. Because the legal person (the Republic of Serbia) is responsible for the damage caused by its agencies to third persons in the discharge or in connection with the discharge of their functions, it suffices to establish that the employees of the Ministry of Internal Affairs have been involved. In deciding on the lawsuit, the court would have had to determine whether the intervention of the Ministry of Internal Affairs' officers was justified or not. If the court finds that the intervention was not justified, it would have accepted the request and ordered the State to compensate the injured party. If the intervention was considered justified, the court would have assessed whether excessive force was used and if, in the court's opinion, it was - the request would have been accepted and the State would have been ordered to compensate the injured party.

4.10 Finally, the State party claimed that the complainant had not exhausted all domestic remedies, as the civil lawsuit described above under the objective responsibility provision is a more effective procedure to obtain redress and stands a better chance of success than the criminal procedure. It further noted that the injured party's request to institute criminal proceedings under article 66 of the Criminal Law against policemen involved in the operation on 8 June 2000 would come under the statute of limitations on 8 June 2006.

Complainant's comments on the State party's observations

5.1 On 6 July 2005, the complainant submitted his comments in which he maintained all his initial claims and stressed that the State party has failed to respond to all aspects of the communication on the alleged breaches of articles 13 and 14 and to certain aspects of article 12. He further stated that the State party's silence could be taken to mean that it has no objections on these points.

5.2 As to the alleged failure to exhaust domestic remedies, the complainant contended that the State party's arguments on the theoretical availability of a separate law suit were unfounded. As implicitly supported by the Committee's jurisprudence, there is no requirement for a victim to pursue multiple avenues of redress[r] - criminal, civil and administrative - in order to be deemed to have exhausted domestic remedies. Moreover, given that the wrong suffered by the complainant clearly falls under article 16 of the Convention, which requires criminal redress, civil and administrative remedies alone would not have provided sufficient redress. Finally, criminal proceedings in the Republic of Serbia are generally quicker and more efficient than civil proceedings.

5.3 The complainant further submitted that the authorities are bound *ex officio* to investigate and punish ill treatment when they have knowledge of it. Both under the CPL and under its successor, the CPC, public prosecutors are obliged to take all steps and to adopt all necessary measures in order to uncover relevant evidence and investigate a case thoroughly. It is irrelevant whether the complainant initiated separate civil proceedings, since the State party is obliged to investigate and to prosecute, as the evidence clearly indicated there had been an abuse.

5.4 The complainant challenged the State party's claim that the law in force at the relevant time limited the public prosecutor's powers in the conduct of criminal proceedings, particularly regarding the police. The public prosecutor was and is empowered with specific competences and powers throughout the entire criminal procedure. He could take over prosecution from the injured party as the prosecutor where, as in the present case, the criminal offences involved are prosecuted *ex officio*. The complainant submitted that under article 155 of the CPL, the public prosecutor had power to instruct both the police and the investigating judge, whereas under article 239 of the CPC, the public prosecutor's power extends only to the investigating judge in this respect. Both laws empower the investigating judge to take actions on his own motion and upon the motion of the public prosecutor. Proper examination of the allegations of mistreatment at the hands of the police would mean, inter alia, ordering the identification of the police officers dressed in civilian clothes through conducting an identity parade for the victim. Various State party bodies could have ordered the police to provide this information through the Ministry of Internal Affairs, the investigating judge or the public prosecutor. The complainant concluded that any differences between the CPC and the CPL have no bearing on the arguments in the present case, especially concerning the State party's obligations under articles 12, 13 and 14 of the Convention.

5.5 The complainant questioned the State party's assertion that during 2000 and 2001 the only independent authority with the powers to regulate police conduct was the Internal Affairs Control Section. The fundamental principle of the division of powers vests the judiciary with this authority.

5.6 The complainant noted the State party's confirmation that there were plainclothes officers on duty and its argument that they used only police truncheons in a legal fashion (no use of fists, kicking, etc.).[1] This assertion does not correspond to the testimonial evidence of abuse corroborated by medical reports and photographs. At the same time, no competent state authority revealed the identity of these plainclothes officers to the complainant, thus absolutely and definitively preventing him from exercising his right to take over the prosecution and ultimately bringing the perpetrators to justice. Even if the identity of the plainclothes officers was not contained in the report, there were numerous ways through which the authorities could have requested this information.

5.7 With regard to the duty to investigate under article 12, the complainant submitted that no internal report by the State party's organs and bodies describing an investigation of the events of 8 June 2000 had been made available to the complainant at any point during the domestic proceedings. As such, he had no input in this internal investigation, no ability to examine testimonial or other evidence provided by the police, no opportunity to confront the plainclothes officers who might have been interviewed nor ensure that all the implicated officers were interviewed. Lastly, the complainant noted that the State party continued to withhold the report of the Internal Affairs Control Section from him and the Committee. He referred to the Committee's jurisprudence recognizing that the state's failure to inform the complainant about whether an internal investigation was being conducted and of its results effectively prevents the complainant from pursuing a private prosecution and thus violates the State party's obligations under article 12.[u]

Supplementary submissions from the State party

6. In a further submission dated 16 November 2005, the State party transmitted a note from the Public Prosecutor's Office, containing similar arguments to those submitted in the State party's observations of 23 May 2005. In addition, the State party challenged the complainant's allegation that a civil lawsuit would not have had a deterrent effect on the perpetration of the criminal offence of abuse of authority.[v] The publication in the media of a court's judgement directing the State to compensate for the acts that had been committed by the officers of the Ministry of Internal Affairs would have probably led the Ministry to take internal disciplinary sanctions. The State party also disagreed with the complainant's statement that civil proceedings take longer than criminal proceedings. The Sate party cited the example of the case of Milan Ristic[w] where a civil action was initiated after a criminal action and the court ordered the State to compensate the family of the victim while the criminal investigation was still pending. The State party concluded that the judicial authorities acted in accordance with domestic legislation and the Convention. Nothing more could be done without a more active collaboration of the complainant or his counsel with the public prosecutor.

Decision of the Committee on admissibility

7.1 On 23 November 2006 the Committee considered the admissibility of the communication. It took note of the arguments advanced by the complainant and his assertion that he had exhausted domestic remedies. The Committee also noted that the State party had disputed this fact and provided a detailed description of the legal avenues available to the injured party to exercise its right to compensation through the institution of criminal, civil and administrative proceedings. It also took note of the State party's argument that the civil lawsuit filed under the objective responsibility provision of the Contracts and Torts Law was a more effective procedure to obtain redress than the criminal procedure. In this regard, the Committee considered that the State party's failure to initiate *ex officio* an investigation into the complainant's allegations and to reveal the identity of the plainclothes officers present during the incident, thus permitting the complainant to take over the prosecution, rendered the application of a remedy that may bring, in the particular circumstances of the present case, effective and sufficient redress to the complainant effectively impossible. Moreover, having unsuccessfully exhausted one remedy one should not be required, for the purposes of the article 22, paragraph 5 (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case not have offered better chances of success. In these circumstances, the Committee concluded that it was not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the communication.

7.2 The Committee noted the complainant's allegations that the plainclothes policemen used disproportionate force, resulting in light personal injury, and that subsequently he had been unable to obtain redress. The State party contended that the policemen tried to act in accordance with the standards governing the intervention against a large number of people and endeavoured to apply force discriminately. The Committee considered, however, that this claim had been sufficiently substantiated, for purposes of admissibility and should be considered on its merits.

7.3 The Committee against Torture therefore decided that the communication was admissible as far as it raised issues under articles 12, 13, 14 and 16 of the Convention.

State party's merits observations

8.1 On 19 June 2008, the State party submitted that the Criminal Code of the Republic of Serbia, the CPC, the Code of Obligations and the Manual on Methods of Assistance Provided by the Ministry of Internal Affairs of 2 December 1997 (Manual) were applicable to the present case. In particular:

(a) Under article 153 of the CPC, in force when the events in question took place, the Public Prosecutor rejects the criminal offence report if there is no basis for the institution of a formal judicial investigation. If the Public Prosecutor is unable to assess from the criminal offence report whether the charges contained therein are probable, or if the data from the criminal offence report or police notification do not provide sufficient grounds for issuing a ruling on the opening of the investigation, the Public Prosecutor requests the police to gather necessary information and undertake other measures, if he is unable to undertake the necessary measures *proprio motu* or through other government authorities. If he concludes that the reported offence is not a criminal offence subject to formal judicial investigation, the Public Prosecutor rejects the criminal offence report. The CPL and the CPC allow the injured party to take over criminal prosecution if the Public Prosecutor rejects the complaint. Furthermore, under article 259, paragraph 3, of the CPC, if the investigating judge decides that the investigation is concluded, he informs the injured party, as prosecutor or private prosecutor, of this fact and notifies the injured party that it may file an indictment with the court, i.e. a private suit, otherwise it would be deemed that the injured party has waived prosecution;

(b) Under article 103, section 6 and 7 (limitations on criminal prosecution), of the Criminal Code, criminal prosecution may not be instituted after three years from the time of committing a criminal offence punishable by more than one year's imprisonment; and of two years from the time of committing a criminal offence punishable by less that one year's imprisonment or fine. Under article 104, section 6 (course and suspension of limitations on criminal prosecution), of the Criminal Code, absolute limitations on criminal prosecution become effective after expiry of twice the time period required by law for limitation of criminal prosecution. At any time after the submission of the criminal offence report, the injured party or its representative have the right to be informed of what the prosecutor has done on the report;

(c) Under article 154 and article 200 of the Serbian Law on Obligations, the complainant had a right to seek compensation through civil action;[x]

(d) According to the Manual, civil servants do not take part in eviction procedures. Evictions are carried out by uniformed officers of the Ministry of Internal Affairs.

8.2 The State party submits that on 10 April and 17 July 2002, the policeman and Construction inspector, respectively, confirmed that "certain civilians" participated in the dispersal of settlement residents who protested against the demolition, without asserting, however, that "these civilians were police officers".

8.3 The State party recalls that, as required by article 12 of the Convention, it conducted a prompt and impartial investigation, and carried out supplementary investigations at the HLC's request on several occasions. The complainant's allegation that plainclothes policemen took part in the event was not proven by the investigation and such presumption "is not in conformity with the applicable regulations of the Republic of Serbia".

8.4 The State party regrets that the absolute statute of limitations for criminal prosecution in the present case has expired on 8 June 2006[y] and stresses that the complainant himself has partly contributed to the slowing down of the investigation. Specifically, the HLC submitted the power of attorney to represent the complainant before the Fourth Municipal Public Prosecutor of Belgrade only seven months the criminal offence report was filed. It also failed to provide the investigating authorities with proper addresses for the complainant and witnesses.

8.5 Irrespective of the absolute statute of limitations for criminal prosecution in the present case, the State party denies that it violated article 14 of the Convention, because the complainant had numerous opportunities to obtain fair compensation for the damages sustained by initiating a civil action.[z] Even if criminal proceedings had been initiated, the court would have directed the complainant, upon the completion of the proceedings, to establish his claim in a civil action. That is, in criminal proceedings the court would have had to ask for expert opinions of economic and medical experts, which would have resulted in longer proceedings and in a substantial increase in costs. Moreover, under the Serbian law, criminal and civil proceedings may be conducted in parallel. The complainant was entitled to claim compensation for all types of damage (reimbursement of medical care costs, physical pain and suffering, etc.) but he failed to avail himself of such possibility. The State party reiterates that the complainant has not exhausted all available domestic remedies.

8.6 The State party ends by stating that it will take measures, if the Committee were to conclude that an absolute statute of limitations for criminal prosecution amounts to a violation of article 13 of the Convention, for adequate compensation of non-pecuniary damages in the amount offered to be paid to the complainant *ex gratia*. This compensation should be in conformity with the practice of domestic and international courts in similar cases.

Complainant's comments on the State party's observations on the merits

9.1 On 12 September 2008, the complainant noted that the State party has changed its argumentation in important respects. Specifically, it now recognises that the CPC was also applicable in the present case, as the complainant had considered from the outset, and accepted his argument that both under the CPL and its successor from March 2002 onwards, the CPC did entrust the prosecutor with the competence and the mandate to fully investigate police ill-treatment allegations.

9.2 The complainant agrees that he had the *right* but not the obligation to initiate a civil action. He reiterates that civil remedies were not too considered as adequate or effective in his case and hence did not have to be exhausted. He also notes that the Committee has already addressed this issue in its admissibility decision, where the Committee held that this alleged "failure" to have recourse to civil remedies did not amount to non-exhaustion.[aa]

9.3 The complainant further notes that, by referring to the Manual[bb] the State party effectively implies that plainclothes policemen could not have taken part in the police operation. Furthermore, the State party argued, for the first time throughout the proceedings both before the domestic courts and the Committee, that the perpetrators of the complainant's ill-treatment were not in fact policemen but rather civilians.[cc] The complainant notes that until now, the State party has not referred to a group of "civilians" being present during the eviction and conceded that police officers did indeed resort to the use of legitimate force against Roma. The complainant refers to the same testimony of Sergeant J. and Construction inspector of, respectively, 10 April and 17 July 2002, which was quoted by the State party, but concludes that it is replete with reference to plainclothes policemen.[dd] The complainant therefore dismisses the State party's argument to the effect that under the applicable legal framework, only uniformed police officers could take part in an eviction. In this respect, the complainant submits that state authorities are responsible in cases where their agents acted *ultra vires*.

9.4 The complainant notes that even if, hypothetically, the new version of events as formulated by the State party is accepted, then the State's responsibility remains engaged. Under article 16 of the Convention, "[e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent *or acquiescence of a public official or other person acting in an official capacity* (emphasis added)." The complainant points out that the State party did not produce evidence as to whether the uniformed policemen who were present undertook any actions in order to protect the Roma from the assault of these "civilians". Neither did it produce any evidence about measures it took to identify these "civilians" and to provide their names to the complainant.

9.5 The complainant concludes that the burden rests on the State party to prove either under which circumstances the complainant was injured by policemen (in accordance with the original version of the events) or how these "civilians" managed to penetrate into the settlement undetected and assault the Roma inhabitants, as the State party currently suggests. The complainant stresses that the police operation launched on that day was mounted following careful preparation and planning, i.e. it was not a "spontaneous" police operation. Therefore, the police authorities had ample time to prepare themselves and take all the necessary measures in order to minimize any kind of threat to the Roma.

9.6 For the complainant reiterates, the State party failed to advance new arguments regarding the adequacy of the investigation launched into his allegations of ill-treatment and recalls that this "is not an obligation of result, but of means". Any investigation should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those held responsible. In the present case, the Prosecutor based his decision not to open the investigation into the HLC's criminal offence report on the report received from the Secretariat of Internal Affairs of Belgrade, Internal Affairs Control Section, dated 9 November 2000.[cc] The State party continues to withhold this report from him and the Committee.[ff] The complainant further notes that the State party itself questions the validity of this report by supporting three mutually exclusive versions of the events that took place on 8 June 2000.[gg]

9.7 The complainant further submits, inter alia, that the State party's authorities have failed to establish how many uniformed (not to mention plainclothes) policemen and from what departments were present on 8 June 2000; to investigate whether any of its agencies uses a vehicle with the license plate number that had been provided by the complainant and other witnesses; and to request a copy of the registry of the Department of Internal Affairs of New Belgrade.[hh] He adds that starting from 25 December 2001, there was concrete evidence[ii] that policemen from yet another police agency, in addition to the Bezanija Police Department, had been involved in the demolition of the "Antena" settlement and that the Prosecutor should have been aware that the information provided by the Department of Internal Affairs of New Belgrade in its letter of 6 February 2003 was inaccurate.[jj] Nevertheless, the complainant's case was closed pursuant to article 257 of the CPC. The complainant argues that the fact that all his requests to supplement the investigation were granted by the investigating judge amounts to a concession of the inadequacy of the investigation measures taken until then.

9.8 As to the State party's claim that the prosecution in the case is now time-barred and that the complainant has partly contributed to the slowdown of the investigation, the complainant submits that:

(a) The delay by the HLC to submit the power of attorney to the Fourth Municipal Public Prosecutor of Belgrade should not have had any impact on the investigation, as the authorities should have taken all measures required to investigate the complainant's allegations *proprio motu*. In any event, the only delay that can be attributed to the complainant is three and not seven months, as claimed by the State party.[kk] Even taking into account this delay, the State party had two years and nine months to conduct an effective investigation before the institution of criminal proceedings became time-barred, and five years and nine months before the absolute time-bar to any proceedings;

(b) As to the alleged delay caused by the complainant's failure to provide the prosecuting authorities with the exact addresses of witnesses, the complainant submits that the State party itself had admitted that locating the Roma witnesses was difficult because after the eviction the authorities were not aware of their whereabouts and the authorities failed to immediately contact the HLC and request its help in locating the relevant witnesses. In addition, the complainant notes that his and the other "Antena" residents' eviction on 8 June 2000 violated relevant human rights standards.[ll]

Consideration of the merits

10.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee takes note of the State party's observations of 19 June 2008 challenging the admissibility of the complaint and finds that the points raised by the State party are not such as to require the Committee to review its decision on admissibility, owing in particular to the State party's failure either to initiate *ex officio* an investigation into the complainant's allegations or to reveal the identity of the persons who caused bodily injury and verbally abused the complainant, thus preventing him from taking over the prosecution. Consequently, there was no domestic remedy left for the complainant that would enable him to take over the prosecution and to claim effective and sufficient redress for the treatment to which he was subjected to on 8 June 2000. The Committee therefore sees no reason to reverse its decision on admissibility.

10.3 The Committee proceeds to a consideration on the merits and notes that the complainant alleges violations by the State party of article 16, paragraph 1, read separately or in conjunction with articles 12 and 13, and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention.

10.4 As to the legal qualification of the treatment to which the complainant was subjected to on 8 June 2000, the Committee considers that the infliction of physical and mental suffering aggravated by the complainant's particular vulnerability, due to his Roma ethnic origin and unavoidable association with a minority historically subjected to discrimination and prejudice, reaches the threshold of cruel, inhuman or degrading treatment or punishment. The Committee notes that the complainant and the State party are at odds as to the identity of the persons who caused bodily injury to the complainant and verbally abused him but the parties concur in as much as the presence of the State party's uniformed policemen (public officials) in the place and at the time in question are concerned. The Committee further notes that the State party did not contest that the complainant has indeed sustained bodily injury and was verbally abused. The Committee recalls that the State party did not claim that the uniformed policemen who were present at the "Antena" settlement at the time when the treatment contrary to article 16 occurred, took steps to protect the complainant and other inhabitants from the abuse and did not produce any evidence that would allow the Committee to deduce that this was the case.

10.5 The Committee considers that, irrespective of whether the persons who had caused bodily injury to the complainant and verbally abused him were or were not public officials, the State party's authorities who witnessed the events and failed to intervene to prevent the abuse have, at the very least "consented or acquiesced" to it, in the sense of article 16 of the Convention. In this respect, the Committee has reiterated on many occasions its concerns about "inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened".[mm] The Committee concludes that there was a violation of article 16, paragraph 1, of the Convention by the State party.

10.6 Having considered that the facts on which the complaint is based constitute acts within the meaning of article 16, paragraph 1 of the Convention, the Committee must analyse other allegations of violations of the Convention in the light of that finding.

10.7 Concerning the alleged violation of article 12, the Committee recalls its jurisprudence[nn] that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein. In the present case, the Committee notes that, despite the presence of a high number of Roma during the events of 8 June 2000 and the participation of a number of uniformed policemen and of a public works inspector, the exact factual circumstances of the case remain unclear. The Committee is of the view that the State party's failure to inform the complainant of the results of the investigation for almost six years by, inter alia, not providing him with the report of the Internal Affairs Control Section of 2000, nor with names of the persons who caused bodily injury to the complainant and verbally abused him, effectively prevented him from assuming "private prosecution" of his case prior to the expiry of the absolute statute of limitations for criminal prosecution. In these circumstances, the Committee finds that the investigation conducted by the authorities of the State party did not satisfy the requirements of article 12 of the Convention. Nor has the State party fulfilled its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have his case promptly and impartially investigated by its competent authorities.

10.8 Concerning the alleged violation of article 14 of the Convention, the Committee notes that the scope of application of the said provision only refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment. Moreover, article 16, paragraph 1, of the Convention while specifically referring to articles 10, 11, 12, and 13, does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision.[oo] The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainant to obtain redress and to provide him with fair and adequate compensation.

11. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of article 16, paragraph 1; article 12; and article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to conduct a proper investigation into the facts that occurred on 8 June 2000, prosecute and punish the persons responsible for those acts and provide the complainant with redress, including fair and adequate compensation and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the Views expressed above.

Notes

[a] The explanation given for the adoption of the decision was that the settlement has been situated on state-owned land and its inhabitants did not have legal title to reside there at the time in question.

[b] According to the testimony of another witness, one M., the number of the van's licence plate is BG 611-549.

[c] As of 29 March 2002, when a new Criminal Procedure Code entered into force, the number of the article in the new Code is 61, paragraph 1. The substance of the provision remained the same.

[d] In his testimony before the court, Master Sergeant J. stated that "the force and clubs were used by officers and colleagues in plainclothes from the Department of Internal Affairs of New Belgrade", whereas his colleagues and he "did not use force on that occasion". For a part of Master Sergeant J.'s testimony referred to by the State party in support of its arguments, see paragraph 4.7 below.

[e] Bezanija Police Department is a sub-department of the Department of Internal Affairs of New Belgrade.

[f] For a part of P.'s testimony referred to by the State party in support of its arguments, see paragraph 4.7 below.

[g] The Court's letter was received on 18 September 2002.

[h] See paragraph 2.5 above.

[i] The letter was received by the victims' representative on 12 May 2003.

[j] Police Headquarters in Belgrade.

[k] See *A v. France*, Judgment of 23 November 1993, Series A no. 277-B; *Miailhe v. France*, Judgment of 25 February 1993, Series A no. 256-C.

[l] See *Bethlen v. Hungary*, Application 26692/95, admissibility decision of 10 April 1997.

[m] Reference is made, inter alia, to the Human Rights Committee's concluding observations on Serbia and Montenegro (*Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40* (A/59/40), para. 75); Human Rights Watch, *World Report 2004: Human Rights and Armed Conflicts*; the International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2004*, on Serbia and Montenegro; Amnesty International, "Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro" (EUR 70/004/2003); Centre on Housing Rights and Evictions, 2003 Global Survey on Forced Evictions; Belgrade Centre for Human Rights, 2003 report on human rights in Serbia and Montenegro, and HLC, "Roma in Serbia (1998-2003)", Belgrade 2003.

[n] *Encarnación Blanco Abad v. Spain*, communication No. 59/1996, Views adopted on 14 May 1998, paras. 8.2 and 8.8. See also, *Assenov and Others v. Bulgaria*, Judgment of 28 October 1998, para. 102.

[o] *Assenov and Others v. Bulgaria* (note n above), para. 102.

[p] See paragraph 2.7 above.

[q] See paragraph 2.10 above.

[r] *Henri Unai Parot v. Spain*, communication No. 6/1990, Views adopted on 2 May 1995, para. 10.4 and *Encarnación Blanco Abad v. Spain*, (note n above), para. 8.6.

[s] See paragraphs 4.9 and 4.10.

[t] See paragraph 4.7 above.

[u] *Dragan Dimitrijevic v. Serbia and Montenegro*, communication No. 207/2002, Views adopted on 24 November 2004, paragraph 5.4.

[v] See paragraph 5.2 above.

[w] *Milan Ristic v. Yugoslavia*, communication No. 113/1998, Views adopted on 11 May 2001.

[x] See also paragraph 4.9 above.

[y] See also paragraph 4.10 above.

[z] See paragraph 8.1 (a) above.

[aa] See paragraph 7.1 above.

[bb] See paragraph 8.1 (d) above.

[cc] See paragraph 8.2 above.

[dd] See, for example, paragraphs 2.7, 2.10, 2.13 above.

[ee] See paragraphs 4.2 and 4.6 above.

[ff] See paragraph 5.7 above.

[gg] See paragraphs 4.2 and 8.2 above.

[hh] See paragraph 2.17 above.

[ii] See paragraph 2.7 above.

[jj] See paragraphs 2.15 and 2.17 above.

[kk] The three months between the rejection of the complaint by the Prosecutor (on 19 February 2001) and the date when the HLC was informed of this decision (19 April 2001).

[ll] Reference is made to the Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on The right to adequate housing (article 11, paragraph 1): forced evictions (E/1998/22-E/C.12/1997/10), paras. 13, 15 and 16.

[mm] See, inter alia, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44* (A/56/44), concluding observations on the initial report of Slovakia, paragraph 104; concluding observations on the second periodic report of the Czech Republic, paragraph 113; and concluding observations on the second periodic report of Georgia, paragraph 81.

[nn] See, inter alia, *Encarnacion Blanco Abad v. Spain* (note n above), paragraph 8.8.

[oo] *Hajrizi Dzemajl et al. v. Yugoslavia*, communication No. 161/2000, Views adopted on 21 November 2002, paragraph 9.6.

Communication No. 291/2006

Submitted by:	Saadia Ali (represented by counsel)
Alleged victim:	The complainant
State party:	Tunisia
Date of the complaint:	2 March 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 21 November 2008,

Having concluded its consideration of complaint No. 291/2006, submitted to the Committee against Torture by Saadia Ali under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant is Ms. Saadia Ali, a French-Tunisian national born in 1957 and currently a resident of France. She claims to be a victim of violations of the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: article 2, paragraph 1, taken in conjunction with article 1, or, alternatively, article 16, paragraph 1; and articles 11, 12, 13 and 14, taken separately or in conjunction with article 16, paragraph 1. She is represented by counsel. The State party made the declaration under article 22 of the Convention on 23 October 1988.

The facts as presented by the complainant

2.1 The complainant was born in Tunisia and holds dual French and Tunisian nationality. Her usual place of residence is in France. On 22 July 2004, during a trip to Tunisia, the complainant accompanied her brother to the court of first instance in Tunis, where he was to retrieve a document he needed for his forthcoming wedding. The official on the counter on the ground floor asked the complainant for the file number; she told him the number had been lost. The official told her she needed to open a new file, a procedure that would take three months. The complainant explained to him that the document was needed urgently for her brother's wedding, and asked him if he could not find the file by using her brother's name, date of birth and address to search for it. The official said he could not and, when she insisted, told her to let him get on with his work. She retorted that it was plain to see that he was not working and added, "If you want to know the truth, it's thanks to us that you are here". The official asked to see her papers and she gave him her French passport; he then asked her to follow him. The complainant followed him, telling him, "I hope you're not going to give me any problems. I know that Tunisia is a democratic country, unless it is just pretending to be one". At this point, her brother begged the official to excuse his sister for what she had said. The official told him nothing would happen to her.

2.2 The complainant followed the official to the office of the vice-president of the court, where a man began to question her. He asked her to confirm what she had said to the official, including the phrase "It's thanks to us that you are here", which she did. He then wrote something in Arabic on a piece of paper and asked her to sign it. As she did not understand what was written, she refused to sign it. The man called a plainclothes policeman and exchanged looks with him; the policeman asked the complainant to follow him. They went back down to the ground floor and along a corridor, where the complainant noticed that people seemed to be giving her worried looks, which deepened her unease. She tried to phone, using her mobile phone, Action by Christians for the Abolition of Torture (ACAT) in Paris, whose number she had. She managed to give her name and say that she was in Tunisia before the plainclothes policeman took her mobile phone and turned it off.

2.3 The complainant claims she asked him where they were going, but that he twisted her arm, out of sight of onlookers. Each time she protested, he increased the pressure. At that point she began to have serious worries about her safety. He took her down some stairs to the basement, to an entry hall where there was a desk and a guard, who snatched her bag from her. He made her go into a corridor where two women were sitting. The complainant asked where they were, to which one of the women replied in Arabic "*eloukouf*", adding, in French, that it meant "prison".

2.4 According to the complainant, another guard - a tall, beefy man with a big nose, fat lips and curly hair - came out of a door in the corridor and began punching and kicking the complainant. He swore at her as he continued to punch and kick her. The force of the blows forced the complainant further down the corridor, until she was outside cells containing about 50 handcuffed men. The guard ripped off her scarf and dress. The complainant was not wearing a bra and found herself half-naked. The guard hit her again and threw her to the floor. He took her by the hair and dragged her to an unlit cell, where he continued punching and kicking her on the head and body. The complainant huddled up and begged for mercy, screaming and in fear for her life. The guard pounded her on the head, back, buttocks, legs, knees and feet, all the while swearing at her and making threats against her family. She was already half-naked, and thought the guard was going to rape her. She was also fearful for the safety of her family in Tunis and France, and thought she was going to die in the cell. She lost consciousness under the hail of blows. When she came back to her senses, she asked for a glass of water, but the guard refused to give her one.

2.5 The complainant adds that the guard made her leave the cell and left her beside the two women in the corridor, who tried to comfort her. The plainclothes policeman who had taken the complainant to the basement took her back to the ground floor, where she found herself in a room with him and a uniformed police officer. They laughed at her and insulted her and her Egyptian husband. The complainant wondered how they knew her husband was Egyptian, and began to fear for his safety. The plainclothes policeman took her to the stairs, which she recognized as the stairs that led down to the basement, whereupon she begged him not to take her down there, as she was afraid she would be beaten to death. He took her into an office where there were some women, one of whom introduced herself as a judge and asked her to confirm that she had said "It's thanks to us that you are here". The complainant did not reply, but started to cry. The judge told her she would be imprisoned for three months, and that that should teach her a lesson. She requested that her family be informed, but the judge refused. The plainclothes policeman spoke up for her, saying "I don't think she'll do it again". The judge asked the complainant to sign a document in Arabic, but she refused. The plainclothes policeman returned her bag and mobile phone, and asked her to check that everything was there. The complainant noticed that the ring she wanted to give her brother's fiancée was no longer in the bag. She tried to ask the policeman about it, but he immediately asked if she was accusing them of something. She said no, for fear of reprisals, and rushed out of the court. Later, she noticed that €700 was also missing.

2.6 The complainant states that the next day and the day after that, she went to the emergency clinic of Charles Nicolle hospital in Tunis for treatment. She obtained a medical certificate stating that she had been beaten on 23 July 2004, although the correct date was 22 July 2004.[a] She returned to France on 27 July 2004, and consulted a doctor in Paris on 30 July 2004. The medical examinations confirmed that she had been beaten and that her body was covered in bruises ("multiple ecchymoses: left arm, right foot, right buttock") and lesions ("contusions", "contusions on the right wrist"). She had received a severe blow to the head ("cranial trauma"), which had given her constant headaches ("cephalalgia") and had various swellings ("oedema"), and she would need two weeks to recover from her injuries barring complications.[b] The abuse and ill-treatment caused her severe trauma, as shown by, for example, a state of constant anxiety, serious sleep problems and significant loss of short-term memory.[c] This also led to family problems, and the complainant made several visits to a psychologist at the Centre Françoise Minkowska in Paris, as well as to a psychiatrist, who prescribed her anti-depressants available only on prescription.[d]

The complaint

3.1 As far as the exhaustion of domestic remedies is concerned, the complainant claims to have contacted a lawyer in Tunis on the day after the events. The lawyer found out that she had been given a three-month suspended prison sentence for attacking an official. On 30 July 2004, the lawyer filed a complaint on behalf of the complainant, describing her detention and the abuse she had suffered at the hands of the security officers, classifying the abuse as torture.[e] He attached copies of the medical certificates to the complaint and asked the prosecutor to open a criminal investigation. The complaint implicated the president of the national security centre at the Palais de la Justice, the court of first instance and all those who would be accused during the investigation. The complaint was rejected by the office of the State prosecutor at the court of first instance, with no reasons given. It has not been possible to obtain any document or official court stamp attesting to the rejection.

3.2 The complainant claims she tried unsuccessfully to pursue the domestic remedies available under Tunisian law. She maintains that there are no effective remedies available in Tunisia for torture victims; the rejection of the complainant's complaint is not an isolated case, as has been documented by several non-governmental organizations: "Many citizens encounter enormous difficulties in trying to file a complaint against police officers who have used violence against them. A complaint filed at a police station or office of the State prosecutor is rejected and sometimes the accused officer is in charge of the investigation."[f] Such practices are contrary to internationally recognized standards on the administration of justice and, in particular, on the work of prosecutors.[g] They are also contrary to articles 25 and 26 of the State party's Code of Criminal Procedure, which stipulate that the State prosecutor represents the public prosecutor's office at the court of first instance and is responsible for "recording all offences and receiving all reports sent to it by public officials or private individuals, as well as complaints from injured parties" (art. 26). The refusal to register a complaint is the consequence and proof of the arbitrary exercise of the functions of the prosecutor. As this practice is common and widespread with regard to the victims of torture and cruel, inhuman or degrading treatment at the hands of the police and other security forces in the State party, the remedies provided for by law cannot be considered effective and available.

3.3 According to the complainant, in addition to the usual criminal prosecution by the authorities, the victim of a crime can initiate criminal proceedings by becoming a party to the prosecution. However, the legal system governing this procedure renders it a sham. Article 36 of the Code of Criminal Procedure permits the injured party to start criminal proceedings by initiating the prosecution if the prosecutor has dropped the case. However, if the prosecutor takes no decision either to drop or pursue the case, the victim cannot initiate proceedings of his or her own accord. The Committee has considered that such a failure to act on the part of the prosecutor poses an insurmountable obstacle to the use of this legal procedure, as it makes it highly unlikely that the criminal proceedings initiated by the civil party will bring relief to the victim.[h] In the present case, in which registration of the complaint was refused, it was impossible for the prosecutor to take a decision. Consequently, according to the complainant, it must be concluded that the rejection of the complaint constitutes an insurmountable obstacle to the initiation by the complainant of criminal proceedings.

3.4 The complainant explains that, under article 45 of the Code of Criminal Procedure, any person who becomes a civil party to the prosecution is liable under civil and criminal law towards the accused if the case is dropped. As the criteria for terminating proceedings are not clearly defined, and any decision to do so is subject to external pressures, this provision exposes the complainant to serious risks of punishment. The complainant notes that the Committee has already expressed concern that this provision may in itself constitute a violation of article 13 of the Convention, as the conditions for filing a complaint could be seen as "intimidating a potential complainant".[i] In the light of the risks posed by this procedure, it cannot be considered either effective or accessible.

3.5 According to the complainant, the civil action referred to in article 7 of the Code of Criminal Procedure is entirely dependent on the criminal proceedings, in that it must be associated with criminal proceedings or must be brought after a conviction has been handed down by the criminal courts. In the present case, the complaint by the complainant was rejected. The criminal proceedings were not instigated because the complaint was rejected by the office of the prosecutor, who neither dropped the case nor opened an investigation into it, rendering access to a civil remedy impossible.

3.6 According to the complainant, the general climate of impunity for the perpetrators of torture and the judiciary's lack of independence in Tunisia render any remedy ineffective.[j] The complainant was the victim of arbitrariness in the Tunisian legal system, in that she was sentenced to a term of imprisonment following a summary trial without due process. There was no investigation into the facts in the case, she was not told what she was being charged with, she had no access to a lawyer and there was no prosecutor at the trial.[k] The judge did not take into account the violence inflicted on the complainant, even though she appeared before her in an extremely fragile and disturbed state.[l] The penalty imposed was disproportionate and the complainant was not formally notified of her conviction: all she had done was to criticize an official for careless behaviour, but her words were taken as an attack.[m] After sentencing her to three months' imprisonment, the judge reduced the sentence after the plainclothes policeman intervened, since the complainant would not "do it again". This interference in the administration of justice is evidence of the lack of separation of the judicial and executive powers.

3.7 In conclusion, the complainant alleges that Tunisian legislation theoretically provides remedies for individuals in situations like hers, but in practice they are futile and inadequate. Accordingly, the complainant had no access to a domestic remedy that could be expected to give her any relief. The requirements of article 22 of the Convention have therefore been met and the complaint is admissible.

3.8 The complainant claims that, with regard to the alleged violation of articles 1 and 2 taken together, the State party failed in its duty to take effective measures to prevent acts of torture and used its own security forces to submit the complainant to acts comparable to acts of torture. The aim was to punish and intimidate her because of what she had said to the official. The abuse to which the complainant was subjected was, in her view, comparable in its gravity to that in other cases in which the Committee considered that such abuse constituted acts of torture.[n] The complainant was also subjected to objectively credible threats that she and members of her family would be raped and to insults and obscenities that caused mental suffering which itself amounted to a form of torture.[o] The circumstances and unfolding of events, as well as the insults, leave no doubt that the intention was to trigger feelings of humiliation and inferiority.[p] The complainant was stripped by force by a person of the opposite sex in the presence of many other persons of the opposite sex. Tearing off her clothes could not be justified by security concerns: it was intended specifically to humiliate her. It also indicates a departure from the Standard Minimum Rules for the Treatment of Prisoners, article 8 (a) of which requires institutions that receive both men and women to keep the whole of the premises allocated to women entirely separate.

3.9 According to the complainant, it is clear that this abuse was inflicted by public officials, as required by article 1 of the Convention, as it was committed by civil servants and members of the forces of law and order acting in that capacity. Moreover, this physical abuse was intentionally inflicted with the aim of punishing her for her remarks to an official. The various officials before whom the complainant was brought questioned her solely about those remarks, and the judge sentenced her on the basis of those remarks.

3.10 According to the complainant, the State party also failed in its obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture. For over 10 years, international human rights treaty-monitoring bodies have been expressing concern about the widespread use of torture and have made recommendations to get the State party to take effective measures to curb this practice.[q] According to the complainant, acts of torture and ill-treatment continue to take place and the Committee has mentioned several provisions of the State party's legal system that are not applied in practice, including the 10-day maximum period for pretrial detention and the obligation to have a medical examination carried out when there are allegations of torture.[r] The constant denial of these allegations by the State party contributes to a climate of impunity for those responsible and encourages the continuation of the practices in question. It follows that the State party has violated article 2, paragraph 1, read in conjunction with article 1.

3.11 With regard to the alleged violation of article 11, the complainant claims that the acts of torture to which she was subjected were not an isolated incident or mistake. According to her, the widespread use of torture by the Tunisian security forces has been widely documented, but the serious concerns expressed by the Committee and other treaty bodies[s] about practices affecting detainees do not seem to have led to a review of the standards and methods that could put an end to such abuse. According to the complainant, the gap between the law and practice in Tunisia indicates that the State party is not keeping under systematic review interrogation rules, instructions, methods and practices with a view to preventing any cases of torture. The State party is thereby in breach of article 11, taken either on its own or in conjunction with article 16, paragraph 1.

3.12 The complainant goes on to claim, in respect of the alleged violation of article 12, that the Committee's jurisprudence on cases of torture and ill-treatment has elaborated on the obligation to carry out an investigation whenever there is reasonable ground to believe that an act of torture has been committed.[t] This obligation exists whatever the grounds for the suspicions. The complainant notes that the Committee has considered that allegations of torture are of such seriousness that a State party has an obligation to proceed automatically to a prompt and impartial investigation as soon as there is reasonable ground to believe that an act of torture has been committed.[u] In cases involving allegations of torture, it is not even necessary to submit a formal complaint. It is sufficient for the victim to bring the facts to the attention of the authorities to place them under an obligation promptly to investigate the allegation.[v] In the present case, the complainant was so upset when she appeared before a judge that her appearance suggested she had been abused. She subsequently gave a lawyer instructions to submit a complaint on her behalf, describing the incidents and expressly classing them as torture. Two articles on the brutal treatment inflicted on the complainant were also disseminated. In the complainant's view, the State party deliberately refused to take any measure that might throw some light on the accusations being made, which amounts to an aggravated violation of the obligation to conduct an investigation under article 12, taken either on its own or in conjunction with article 16, paragraph 1.

3.13 In respect of her allegation under article 13, the complainant notes that the Committee has established that it is sufficient for the victim simply to formulate an allegation of torture to oblige the authorities to investigate the allegation. Neither a formal complaint nor an express statement of intent to institute criminal proceedings is required.[w] In the present case, the State party deprived the complainant of any remedy that might have led to ascertaining the facts and setting compensation.

3.14 The complainant claims that she is the victim of a violation of article 14. According to her, the State party denied her right to obtain redress and the means for full rehabilitation, as it prevented her from making use of the legal channels for this purpose. The international courts have consistently held that allegations of torture made against the authorities of a State party are of such seriousness that a civil action alone cannot provide adequate redress.[x] Full redress comprises compensation for harm suffered and an obligation on the State party to establish the facts related to the allegations and to punish the perpetrators of the violations.[y] By not following up on the complainant's complaint, and by not proceeding with any kind of public investigation, the State party deprived her of the most basic and most important form of redress, in violation of article 14.

3.15 According to the complainant, with regard to compensation, even if this constituted sufficient redress for victims of torture, she was denied access to it. The civil actions theoretically available to her were in practice inaccessible. Tunisian law permits the complainant to undertake a civil action where no criminal proceedings have been initiated, but the complainant must waive the right to pursue any criminal proceedings (Code of Criminal Procedure, art. 7). Even supposing that the complainant could win the case without the benefit of criminal proceedings, this limited form of redress would be neither fair nor adequate. If the State party was permitted to provide purely financial compensation to the complainant or other victims of torture and thereby claim to have fulfilled its obligations in this respect, that would amount to accepting that the State party is entitled to evade its responsibility in exchange for a certain sum of money. The complainant has not received the means for her rehabilitation, while the abuse inflicted on her has left deep psychological scars. Nor has she been able to obtain compensation for the property taken from her during her detention. In the light of all these points, the State party has deprived the complainant of fair and adequate compensation or redress of any kind, in violation of article 14, taken either on its own or in conjunction with article 16, paragraph 1.[z]

3.16 The complainant considers that, with regard to the alleged violation of article 16, the serious abuse inflicted on her was tantamount to torture. If, however, this interpretation is not accepted, it is maintained that such treatment constituted cruel, inhuman or degrading treatment within the meaning of article 16.

3.17 In conclusion, the complainant asks the Committee to recommend that the State party take the necessary measures to conduct a full investigation into the circumstances surrounding the torture in her case, to communicate the outcome of the investigation to her and to take appropriate measures to bring those responsible to justice. She also asks the Committee to recommend that the State party take the necessary measures to ensure that she receives adequate and full redress for the harm suffered, including the cost of the medical care needed for her rehabilitation and the value of the property taken from her.

State party's observations on admissibility and complainant's comments

4. On 12 December 2006, the State party informed the Committee that the complaint in question, registered as case No. 5873/4, was the subject of a judicial investigation at the Tunis court of first instance. The investigation is taking its course.

5. On 9 February 2007, counsel for the complainant said that, despite having had nine months in which to reply to the complainant's allegations, the State party had addressed neither the admissibility

nor the merits of the communication. As far as admissibility was concerned, the State party simply stated that the complainant's case was the subject of an internal judicial procedure without producing any evidence or details of the existence of such a procedure - such as judicial or procedural files or other official documents - or even indicating the type and nature of the procedure or whether the procedure was likely to result in a legal remedy that might satisfy the requirements of the Convention, in accordance with rule 109 (9) of the Committee's rules of procedure.[aa] Moreover, the State party made no comment on the merits of the case.

Additional observations by the State party

6.1 With regard to the admissibility of the complaint, on 30 March 2007 the State party indicated that all necessary measures had been taken, at the current stage of the procedure, to enable the complainant to substantiate the claims in her complaint. As soon as the Tunisian authorities had been notified by the Committee of the complainant's communication, the Ministry of Justice and Human Rights, acting in accordance with article 23 of the Code of Criminal Procedure, referred the matter to the State prosecutor of the Tunis court of first instance. The preliminary inquiries were conducted by the Tunis prosecution service, which undertook the necessary investigations: the evidence collected was insufficient to justify a prosecution and the prosecution service decided on 27 June 2006 to open a preliminary judicial investigation, and ordered an investigating judge to investigate the incidents that are the subject of the complaint, including the circumstances of the arrest of the complainant on 22 July 2004 and the alleged incidents in relation thereto. The case was registered with the investigating judge as case No. 5873/4.[bb] According to information received from the public prosecutor's office, the investigating judge proceeded to hear several witnesses and question individuals implicated by the complainant, and also seized documents that could be used as evidence. The matter is taking its course in accordance with the law pending completion of the investigation.

6.2 In its desire not to interfere in a matter that falls under the jurisdiction of the courts and not to influence the normal course of the investigation, the State party explains that it has refrained from submitting, at this stage of the procedure, any comments on the merits of the case, which would be contrary to the universally accepted principle of non-disclosure of the confidential findings of an investigation. The State party has restricted itself to the above-mentioned points pending the conclusion of the investigation, which, at this late stage of the procedure, should be completed shortly.

6.3 The State party notes that the opening of a judicial investigation is a legal remedy that satisfies the requirements of the Convention, in accordance with rule 109 of the Committee's rules of procedure. Once the judicial investigation has been opened, the investigating judge in charge of the case proceeds, in accordance with article 53 of the Code of Criminal Procedure, to hear the complainant, collect statements from witnesses, question suspects, visit the scene where necessary to make the usual observations, seize objects that could be used as evidence, order expert reports where necessary and take all necessary steps to establish the truth, considering evidence that both incriminates and exonerates the suspect.

6.4 According to the State party, complainants can also become a party to the prosecution by presenting themselves to the investigating judge conducting the investigation: this enables the complainant to follow the procedure as it takes its course, to submit conclusions where necessary and to appeal against the decisions of the investigating judge. Once the investigation is concluded, the investigating judge issues an order containing one of the following findings: (a) that there are no grounds for prosecution, including if the judge thinks that criminal proceedings are not in order, that the acts concerned do not constitute an offence or that there is insufficient evidence against the accused; (b) that the accused should be referred to the appropriate court, including if it is established that they committed the acts of which they are accused, and which are classed as offences or misdemeanours by law; or (c) that the accused should be referred to the indictments chamber, where the acts that have been proved constitute a criminal offence.

6.5 The State party explains that orders are communicated to the civil party, who may, within four days of notification, lodge an appeal against any order that adversely affects his or her interests. The appeal takes the form of a written or oral statement and is received by the registrar of the investigations office. The indictments chamber rules on the appeal; its decisions are enforceable with immediate effect. If the indictments chamber finds that the acts do not constitute an offence or that there is insufficient evidence against the accused, it discharges the accused. If, on the other hand, there are sufficient indications of guilt, it refers the accused to the appropriate court - in this case, the criminal court or the criminal section of the court of first instance. The indictments chamber can also order a further investigation, entrusting it either to one of its judges or to the investigating judge. It can also, under its power to raise issues, order new proceedings and investigate or order an investigation into acts that have not yet been investigated. Once notice of the decision has been served, the civil party can launch an appeal on points of law against a decision of the indictments chamber in the following cases: when the chamber orders the discharge of the accused; when it declares the civil action inadmissible; when it declares the criminal prosecution time-barred; when it finds, either of its own motion or in response to objections by the parties concerned, that the court to which the case was referred did not have jurisdiction; or when it fails to rule on one of the counts.

6.6 The State party argues that the complainant may also, if it is established that he or she has suffered injury as a direct result of an offence, pursue a claim for damages in civil proceedings. These proceedings can be held simultaneously with the criminal prosecution or separately, in a civil court, as set out in article 7 of the Code of Criminal Procedure. Civil proceedings in criminal courts are initiated by becoming a party to the prosecution; when pursued through the trial court, they are aimed at obtaining compensation for harm suffered. A person can become a civil party to a criminal prosecution by submitting a written request, signed by the plaintiff or his or her representative, to the court handling the case. The court considers the admissibility of the application to become a civil party and, where appropriate, declares it admissible. The court concerned joins the application to the merits, and rules on both in a single judgement. However, when the civil party is acting as the principal, the court issues an immediate ruling on the application.

6.7 In conclusion, the State party considers that the present communication is inadmissible under article 22 of the Convention, given that it has been established that the available domestic remedies have not been exhausted. The remedies recognized by Tunisian legislation to all plaintiffs are effective and enable them to substantiate the claims that are the subject of their complaint in a satisfactory manner. Consequently, the submission of the complaint by the complainant to the Committee is unjustified.

Complainant's comments on the State party's observations

7.1 On 23 April 2007, the complainant wrote that the launch of an investigation by the Tunisian authorities solely as a result of the communication submitted to the Committee constitutes further irrefutable evidence of the ineffectiveness and futility of domestic remedies in Tunisia. The incident at the origin of the complaint took place on 22 July 2004 and the complainant immediately took steps to have her representative file a complaint with the appropriate authorities on 30 July 2004. Referring to the initial communication, the complainant reiterates that the Tunisian authorities refused to investigate her complaint or even to accept that it should be examined. The Tunisian judicial system offers no remedies to the victims of torture and ill-treatment, and it is therefore futile to attempt to exhaust them. The fact that the Tunisian authorities took no action for 23 months after the complaint was submitted, and that they then, as they have admitted, launched an investigation solely because the complaint had been submitted to the Committee, provides further evidence of the futility of attempting to exhaust domestic remedies in Tunisia. The action taken by the State party in response to her complaint is symptomatic of the tactics used by the State party to discourage complainants and to prevent their cases from reaching the Committee, and does not reflect a genuine desire to investigate and prosecute officials of the State party.

7.2 The application of remedies in Tunisia is, according to the complainant, unreasonably prolonged, given that the State party waited 23 months before launching an investigation which is still in its preliminary phase, that is, in the phase where evidence is collected. No charges have yet been laid, still less have any proceedings been initiated. Even supposing that the investigation would be conducted in good faith and lead to the prosecution of the perpetrators, it could reasonably be expected that the proceedings would be very long, and perhaps drawn out over several years. Given the delay of 23 months before the investigation was even opened, these facts support the conclusion that the application of domestic remedies is unreasonably prolonged. The complainant draws attention to the jurisprudence of the Human Rights Committee, which concluded that "a delay of over three years for the adjudication of the case at first instance, discounting the availability of subsequent appeals, was 'unreasonably prolonged' within the meaning of article 5, paragraph 2 (b), of the Optional Protocol".[cc] In the present case, it is certain that this three-year limit set by the Human Rights Committee will be exceeded, since the investigation by the Tunisian authorities is still in its preliminary phase. The complainant reiterates that the State party's failure to launch an investigation for 23 months constitutes a violation of article 12 of the Convention.[dd]

7.3 According to the complainant, given the persistent refusal by the State party to comment on the merits of the complaint, the Committee should base its decision on the facts as she describes them. The Human Rights Committee and the Committee against Torture have consistently maintained that due weight must be given to a complainant's allegations if the State party fails to provide any contradictory evidence or explanation.[ee] The complainant reiterates that, in her case, the State party has not expressed any view on the merits; the complainant, however, has correctly proceeded to substantiate her allegations with a number of documents, including copies of her medical records, her complaint to the Tunisian judicial authorities, witness statements and a large amount of supplementary documentation. She considers therefore that the Committee should base its decision on the facts as described by her. As to the State party's claim that it cannot comment on the merits of the complaint as long as the internal investigation is ongoing, the complainant argues that responsibility for both the delay in instigating the internal procedure and the delay pending its conclusion lies with the State party, as it did not take any action for two years and finally acted only when her complaint was submitted to the Committee. The unreasonable delay in the internal procedure as a result of the State party's failure to act should not detract from the complainant's case to the Committee. To allow it to do so would be to do wrong both to the complainant and to the cause of justice.

7.4 According to the complainant, the State party has not been able to demonstrate that remedies are effectively available to victims in Tunisia. She points out that, under the rules of international law, the Committee considers "effective" only those remedies available to the victim not only in theory but also in practice.[ff] She argues that the judicial system in Tunisia is not independent and the courts generally endorse the Government's decisions. In situations where it has been clearly demonstrated that access to the courts is denied to individuals like the complainant, the burden of proof is on the State party to prove the contrary. In the present case, the State party has not met this burden of proof because it has merely described the theoretical availability of remedies without contradicting any of the numerous pieces of evidence provided by the complainant to show that these remedies are not available in practice.[gg] Additional observations by the State party and additional comments by the complainant.

8.1 On 27 April 2007, regarding the complaint that the complainant claims to have filed on 30 July 2004 through her representative, the State party maintained that the file contains no credible evidence confirming her allegations. The rules of evidence exclude the attribution of evidentiary weight to certificates and documents drawn up on the complainant's own behalf. Consultation of the complaints register, the IT database and registered mail of the office of the Tunis prosecution service shows no record of the filing of the complaint. The prosecution service's alleged refusal to receive the complaint would in no way have prevented the complainant from filing the complaint by any means that would leave a written record.

8.2 On 2 May 2007, the complainant pointed out that the submission of a written affidavit constitutes a generally accepted form of evidence. She reiterated her previous arguments and said that the State party was deliberately refraining from recording complaints of official misconduct.

Additional observations by the State party and additional comments by the complainant

9.1 On 31 July 2007, the State party said that Tunisian legislation provides for severe penalties against perpetrators of torture and ill-treatment. Numerous examples demonstrate that recourse to the Tunisian courts in similar cases has been not only possible but also effective. The Tunisian courts have reached decisions in dozens of cases concerning law enforcement officials on various charges. The sentences handed down have ranged from fines to up to 10 years' unsuspended imprisonment. Provisions are in place for disciplinary measures against law enforcement officials, and they may also be brought before the disciplinary council of the Ministry of the Interior and Local Development.

Statistics published by the ministries concerned prove that no pressure or intimidation is used to prevent victims from filing complaints, and that there is no impunity.

9.2 The State party points out that the complainant's case remains under examination, and domestic remedies have therefore not been exhausted. The State party points out that it has consistently provided the Committee with all available information on the question, as well as on the preliminary investigation conducted by the Tunis prosecution service and the preparatory examination assigned to one of the investigating judges of the Tunis court of first instance (case No. 5873/4). On 8 May 2007, the investigating judge communicated the whole procedure to the public prosecutor, after having heard several witnesses, questioned the persons accused by the complainant and seized documents that could constitute evidence. Pursuant to article 104 of the Code of Criminal Procedure, the prosecutor set out written petitions for further investigations, including a summons sent to the complainant at her current residence in France. The investigating judge therefore undertook further measures by ordering, on 29 June 2007, an international letter of request to transmit a summons to the complainant in France, for her to present herself before the judge on 14 August 2007. The case is still under way. The State party requests the Committee to defer its decision on the merits pending the completion of the investigation.

10. On 30 August 2007, the complainant said that the State party had adduced no new argument. Regarding the State party's contesting the lack of effective remedy in Tunisia, the complainant notes that the State has not furnished any evidence in support of its allegations. The complainant contests the State party's affirmation that the case is still under way, since she has not received any communication on that subject. If there had been any developments in the State party, she would have been informed by her Tunisian lawyer, who confirms that he is not aware of any new development and has not been contacted by the Tunisian authorities in this case. Consequently, the State party's claims that there have been developments in the national proceedings must also be considered as completely unfounded.

Additional observations by the State party

11.1 On 25 October 2007, the State party presented copies of judgements that provide irrefutable proof that the Tunisian judicial authorities do not hesitate to prosecute cases of abuse of power by law enforcement agents, particularly acts of violence and ill-treatment, and to impose severe penalties if they are found guilty. Since criminal proceedings are without prejudice to the authorities' right to initiate disciplinary proceedings against officials, on the principle that criminal and disciplinary offences may be tried separately, the perpetrators of such offences are also generally subjected to disciplinary measures resulting in dismissal. The State party also lists cases brought against police and prison officers and officers of the National Guard in the Tunisian courts between 2000 and 2006. The State party states that it has always endeavoured to set up the necessary mechanisms to protect human rights, particularly monitoring and inspection mechanisms, while facilitating access to justice. In addition, human rights training courses for law enforcement agents have been introduced. This information shows that domestic remedies are effective and efficient. The State party points out that judicial proceedings are under way and that exhaustion of domestic remedies is a fundamental principle of international law. It requests the Committee to defer its decision for a reasonable period to allow the domestic courts to fully investigate the events referred to in the complaint. The complainant's persistence compels the State party to reveal some elements of the case that raise questions as to the complainant's credibility.

11.2 Firstly, the State party notes that the medical certificate corresponding to the complainant's visit to Charles Nicole hospital is dated 24 July 2004 and refers to events that occurred on 23 July 2004, whereas her complaint states that she went to the hospital the day after the alleged events, that is, 23 July 2004. This double contradiction of the facts as reported by the complainant herself is such that it eliminates any causal link between the injuries she alleges and her appearance at the court of first instance in Tunis. Secondly, according to a statement by one of the complainant's fellow detainees, taken by the investigating judge, the complainant had tried to bribe her, offering her money to make a false statement on her behalf to the effect that the complainant had been subjected to acts of violence by the arresting officers. Thirdly, the complaint states that, immediately after her arrest on 22 July 2004, the complainant tried to use her mobile phone to call ACAT. Such a reaction immediately following her arrest suggests a premeditated act and a strategy planned in advance to simulate an incident that would provide the opportunity to submit a complaint against the Tunisian authorities. Fourthly, the hearing of the complainant's fellow detainees showed that she had not been subjected to ill-treatment. In this regard, the State party refers to its comments of 31 July 2007 as well as to summonses sent to the complainant at her addresses in Tunisia and France. This attests to the diligence with which the judge handling the case has been proceeding, despite the complainant's prevarication. The judge organized a hearing of the persons involved in the case, notably the police officers on duty on the date of the events at the centre of the complaint and the fellow detainees whose names were listed in the prisoners' register kept at the court of first instance in Tunis.

Deliberations of the Committee on admissibility

12.1 At its thirty-ninth session, the Committee considered the admissibility of the complaint and, in a decision of 7 November 2007, declared it admissible.

12.2 The Committee ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

12.3 With respect to the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a description of the remedies available, under law, to any complainant. Nonetheless, the Committee considered that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant. In particular, the Committee took note of the information provided by the complainant on the complaint she had instructed the lawyer to file with the prosecutor's office on 30 July 2004. The Committee considered that the insurmountable procedural impediment faced by the complainant as a result of the refusal to allow the lawyer to register the complaint rendered the application of a remedy that could bring effective relief to the complainant unlikely. Such a refusal rendered the State's suggested consultation of the complaint registers completely ineffectual. The Committee also noted that the State party, in its observations, indicated that an investigation was under way, but that it provided no new information or evidence that would allow the Committee to judge the potential effectiveness of that investigation, which had been launched on 27 June 2006, almost two years after the alleged incidents had taken place. The Committee concluded that, in the circumstances, the domestic proceedings had been unreasonably prolonged and considered that in the present case there was little chance that the exhaustion of domestic remedies would give satisfaction to the complainant.

12.4 The Committee took note of the State party's argument that submission of the complaint by the complainant was unjustified. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. With respect to article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure, the Committee saw no further obstacle to the admissibility of the complaint.

12.5 The Committee against Torture consequently decided that the communication was admissible with regard to article 2, paragraph 1, taken in conjunction with article 1, or, alternatively, article 16, paragraph 1; and articles 11, 12, 13 and 14, taken separately or in conjunction with article 16, paragraph 1 of the Convention.

State party's observations on the merits

13.1 On 23 January 2008, the State party argued that the Committee's decision on admissibility was based solely on the "misleading statements" of the complainant's Tunisian counsel. The new evidence obtained through the investigation, however, showed those statements to be unfounded. Indeed, when the complainant was heard by the investigating judge handling the case on 11 December 2007, she stated explicitly that "she had never filed a complaint of ill-treatment with the State prosecutor in Tunis because she was not aware of the procedures, nor had she instructed a lawyer to do so".[hh] This revelation raises numerous questions, moreover, about the unstated motives of the complainant, who seems to have pursued international remedies in preference to domestic judicial ones. According to the State party, the domestic proceedings have not been unreasonably prolonged, as no complaint was ever received by the national judicial authorities, and those authorities decided to open a judicial investigation without delay, as soon as they had been notified by the Committee of the complainant's communication on 27 June 2006. This being the case, the complainant's Tunisian counsel twisted the facts in order to mislead the Committee. For all these reasons, the State party invites the Committee to reconsider its decision declaring the complainant's communication admissible.

13.2 The State party provides additional evidence revealed during the hearing by the investigating judge of the complainant, her brother and all the law enforcement officers on duty on the day of the incident at the court of first instance in Tunis, and during the confrontation of the complainant and the witnesses. When she was heard on 11 December 2007, the complainant repeated her version of events, as presented to the Committee. She admitted, however, that she had tried to bribe one of her fellow detainees, asking the woman to testify in her favour in exchange for an unspecified gift. During his hearing by the investigating judge on 4 January 2008, the complainant's brother confirmed that she had accompanied him to the court of first instance in Tunis on 22 July 2004. He explained that he was not present, however, during the events that gave rise to the complaint, as he had gone to have coffee, and that he had only learned of her altercation with the registrar on his return to the court. He went to the prosecutor's office, where he found his sister waiting to be brought before the prosecutor. He then decided to go home. Furthermore, he told the investigating judge that, when she returned home, his sister bore no sign of violence, and she did not inform any family member of the ill-treatment to which she had allegedly been subjected at the court. He added that his sister behaved normally on her return from the court and did not mention having been to the hospital clinic to seek treatment.[ii] The State party reports that, during the hearing of the law enforcement officers on duty at the court of first instance in Tunis on 22 July 2004, the officers categorically denied the complainant's allegations, asserting that she had not suffered any ill-treatment.[jj]

13.3 The investigating judge conducted the usual confrontations, during which the complainant repeated that she had been subjected to ill-treatment, identifying two of the three law enforcement officers as having been on duty on the day of the incident. Of those two officers, one, according to the complainant, had played no part in the alleged events. She identified the other officer as the one who had taken her to the court's jail, gripping her arm, which had caused her pain. She said that a third officer, not the one who had been brought before her, had been responsible for the ill-treatment inflicted. However, the officer who had been brought before her stated that he had been the third officer on duty on 22 July 2004. In addition, the complainant reaffirmed that she had asked one of her fellow detainees to testify in her favour in exchange for a gift. She also admitted that she had not informed her family of the ill-treatment on her return home. The persons detained along with her and the law enforcement officers reiterated that the complainant had not been subjected to any ill-treatment while being held in the court's jail. The complainant's brother repeated his previous statements.

13.4 According to the State party, the evidence contained in the investigation file confirms the double contradiction noted in respect of the medical certificate submitted to the Committee by the complainant (see paragraph 11.2 above). It also confirms that the complainant was not subjected to ill-treatment at the court of first instance in Tunis. Consequently, the State party requests the Committee to reconsider its decision declaring the complaint admissible, since domestic remedies have not been exhausted, the investigation is still under way and the evidence uncovered by the investigation as to the merits demonstrates that the complaint is baseless.

Complainant's comments on the State party's observations

14.1 On 7 April 2008, the complainant argued that the issue of admissibility had been settled by the Committee's decision of 7 November 2007. She made clear that she had indeed filed a complaint with the domestic courts and that she had twice travelled to Tunis in response to summonses by the investigating judge of the court of first instance, in order to be present at two hearings relating to the investigation into her complaint of torture and ill-treatment. The hearings were held on 11 December 2007 and 7 January 2008 at the fourth investigations office of the court of first instance. Three other hearings seem to have been organized, however, without her presence having been sought, on 30 August 2007, 31 August 2007 and 4 January 2008.

14.2 The complainant notes that the State party has included in the file a partial record of those hearings, contained in eight annexes in Arabic. The records are incomplete and confused and numerous passages have been omitted, without any explanation being provided by the State party. The complainant comments that these documents do not constitute records, since they do not reflect what was actually said during the investigating judge's interviews with the witnesses: they do not contain the statements as delivered by the witnesses but purport to be a summary thereof. The witnesses' actual statements remain unknown. These records therefore have no evidentiary value.

14.3 The complainant notes that, on 7 January 2008, on the conclusion of the hearings, she requested a copy of the complete file, including the records, but her request was refused. She was thus denied the opportunity to refute the State party's arguments and to submit to the Committee evidence from the file substantiating her complaint. She points out that, in its annual report on human rights practices, the United States Department of State expressed concern about the prevalence of this type of practice in Tunisia.[kk] The applicant disputes categorically the veracity of the statements made by the witnesses during the confrontation. For this reason, she refused to sign the record of the hearings, and she explained clearly to the investigating judge why she was doing so.

14.4 According to the State party, the complainant stated "explicitly" before the investigating judge that she had never filed a complaint of ill-treatment. She notes, however, that the record of her evidence makes no reference whatever to any such statement on her part. Likewise, the State party asserts that she admitted having tried to bribe one of her fellow detainees. Yet the record contains no mention of any such statement by the complainant. The State party's assertions are thus false and without foundation.

14.5 The complainant notes that certain documents submitted by the State party are incomplete, ending with unfinished sentences. She comments that the State party's observations contain inaccuracies. The State party asserts that the complainant's fellow detainees reaffirmed that she had not been subjected to any ill-treatment while being held in the court's jail. It is clear, however, on reading the record of their evidence, that the witnesses confirmed that they had not seen the complainant being ill-treated.

14.6 The complainant stresses that she did indeed make a complaint to the domestic courts, through her Tunisian counsel. She points out that she transmitted a copy of the complaint to the Committee. She rejects the allegation that she tried to bribe a witness. The investigating judge never took evidence from the witness in question. The accusation is thus illogical.

14.7 Regarding her brother's evidence, the complainant explains that she was too shocked and traumatized by the acts of torture and ill-treatment to which she had just been subjected to inform her family immediately of what had occurred. The injuries she sustained were to parts of her body that were covered by clothing, specifically her left arm, foot, buttocks, right wrist and head (but not her face), and could not therefore be seen by her family.[ll] She explained all of these facts to the investigating judge. She comments that her relationship with her family is strained and that she did not therefore feel able to reveal to them the intimate details of the abuse she had just suffered. The tensions in the complainant's family are confirmed by the record of the hearing of her brother: he stated that his sister had "ruined the atmosphere at his wedding".

14.8 Lastly, the complainant refers to new information that has recently become available attesting to the existence of numerous procedural irregularities that permeate the Tunisian justice system and establishing that torture and ill-treatment are common practices in Tunisia.[mm] In conclusion, the complainant asserts that she has been consistent and has provided numerous details and that her version of events is therefore credible, and has been since the start of the proceedings. She has adduced a great deal of evidence to substantiate her complaint. The fact that she travelled to Tunisia twice to be present at the hearings demonstrates her good faith and her willingness to cooperate with the State party, with a view to shedding light on the case.

Consideration of the merits

15.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

15.2 The Committee takes note of the State party's observations of 23 January 2008 challenging the admissibility of the complaint. It notes, however, that even though a judicial investigation was opened on 27 June 2006, the investigation has yet to result in a decision. It also takes note of the "records" of the hearings and confrontations organized in the course of the investigation, while observing that the documents produced by the State party seem to be summaries - rather than records - of the hearings; that they are incomplete, some passages having been omitted; and that the statements imputed to the complainant do not appear in them. It therefore considers that the points raised by the State party are not such as to require the Committee to review its decision on admissibility, owing in particular to the lack of any convincing new or additional information from the State party concerning the failure to reach any decision on the complaint after more than four years of *lis alibi pendens*, which in the Committee's opinion justifies the view that the exhaustion of domestic remedies has been unreasonably prolonged (see paragraph 12.3 above). The Committee therefore sees no reason to reverse its decision on admissibility.

15.3 Accordingly, the Committee proceeds to its consideration of the merits and notes that the complainant alleges violations by the State party of article 2, paragraph 1, taken in conjunction with article 1, or, alternatively, article 16, paragraph 1; and articles 11, 12, 13 and 14, taken separately or in conjunction with article 16, paragraph 1, of the Convention.

15.4 The Committee observes that the complainant has alleged a violation of article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was subjected are considered acts of torture within the meaning of article 1 of the Convention. In this respect, the Committee takes note of the complaint submitted and the supporting medical certificates describing the physical injuries inflicted on the complainant, which can be characterized as severe pain and suffering inflicted deliberately by officials with a view to punishing her for her words addressed to the registrar of the court of first instance in Tunis and to intimidating her. Although the State party disputes the facts as presented by the complainant, the Committee does not consider the State party's arguments to be sufficiently substantiated. In the circumstances, the Committee concludes that the complainant's allegations must be duly taken into account and that the facts, as presented, constitute torture within the meaning of article 1 of the Convention.

15.5 In the light of the above finding of a violation of article 1 of the Convention, the Committee need not consider whether there was a violation of article 16, paragraph 1, as the treatment suffered by the complainant in breach of article 1 of the Convention exceeds the treatment encompassed in article 16.

15.6 Regarding articles 2 and 11, the Committee considers that the documents communicated to it furnish no proof that the State party has failed to discharge its obligations under these provisions of the Convention.

15.7 As to the allegations concerning the violation of articles 12 and 13 of the Convention, the Committee notes that the prosecutor never informed the complainant's lawyer, or the complainant herself, whether an inquiry was under way or had been carried out following the filing of the complaint on 30 July 2004. The State party has, however, informed the Committee that the competent authorities took up the case as soon as they had been notified by the Committee of the complainant's communication and that the Tunis prosecution service decided on 27 June 2006 to open a preliminary judicial investigation. The State party has also indicated that the investigation is still ongoing, more than four years after the alleged incidents, without giving any details. In addition, the Committee notes that the prosecutor rejected the complaint filed by the lawyer and that the complainant has thus effectively been prevented from initiating civil proceedings before a judge. The Committee considers that a delay of 23 months before an investigation is initiated into allegations of torture is excessive and does not meet the requirements of article 12 of the Convention,[nn] which requires the State party to proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. Nor has the State party fulfilled its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have her case promptly and impartially investigated by, its competent authorities.

15.8 With regard to the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the State party has deprived her of any form of redress by failing to act on her complaint and by not immediately launching a public investigation. The Committee recalls that article 14 of the Convention not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. Given the length of time that has elapsed since the complainant attempted to initiate proceedings at the domestic level, and given the lack of information from the State party concerning the completion of the investigation still under way, the Committee concludes that the State party has also breached its obligations under article 14 of the Convention.

16. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 1, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the acts inflicted on the complainant to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complainant.

Notes

[a] Attached to file.

[b] Medical certificate dated 30 July 2004 attached to file.

[c] The complainant also provides a statement from a human rights activist in Tunisia who says that she saw the complainant in August and that the bruises and marks were still clearly visible. The activist had learned of the complainant's questioning from ACAT on 22 July 2004 and had immediately contacted a representative of the French Ministry of Foreign Affairs in North Africa. The activist also posted an article on the Internet on 15 December 2004 to publicize the case.

[d] Attached to file.

[e] Complaint attached to file, with a translation into French. It also lists the objects not returned to the complainant after she was abused.

[f] See the attached 2001 report by the National Council of Liberties in Tunisia and the Tunisian League of Human Rights. See also the other reports mentioned by the complainant, including those by Amnesty International, the World Organization against Torture, the International Federation of Human Rights Leagues, the International Commission of Jurists, Human Rights First and Human Rights Watch. See also the press release issued on 16 November 2005 by several United Nations experts concerned with the situation in Tunisia, on freedom of expression and assembly and the independence of the judiciary.

[g] Counsel refers to the summary record of the first part (public) of the 358th meeting of the Committee against Torture, held on 18 November 1998 (CAT/C/SR.358, para. 23), and the Guidelines on the Role of Prosecutors adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August-7 September 1990).

[h] Communication No. 207/2002, *Dragan Dimitrijevic v. Serbia and Montenegro*, Views adopted on 24 November 2004, para. 5.4.

[i] Summary record of the first part (public) of the 358th meeting of the Committee against Torture, held on 18 November 1998 (CAT/C/SR.358, para. 29).

[j] See footnote f above.

[k] According to counsel, this violates article 141 of the Code of Criminal Procedure ("the assistance of a counsel for the defence is compulsory in the court of first instance … when it is ruling on a criminal offence … if the accused does not select a counsel, the president of the court will appoint one of his own accord"), as well as principles 10, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988. See also general comment No. 20 (1992) of the Human Rights Committee, para. 11.

[l] Counsel refers to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of the Council of Europe, which requires the judge to take appropriate steps if there are any signs of ill-treatment (CPT Standards, CPT/Inf/E (2002) 1, para. 45).

[m] Counsel refers to communication No. 1189/2003, *Fernando v. Sri Lanka*, Views adopted on 31 March 2005, in which the Human Rights Committee found that there had been a violation by the State party of article 9 of the Covenant in that the author had been sentenced to one year of rigorous imprisonment for raising his voice in court and refusing to apologize.

[n] Counsel refers to communication No. 207/2002, *Dragan Dimitrijevic v. Serbia and Montenegro*, (a young detainee not charged with any offence beaten repeatedly by police officers in a police station), and communication No. 49/1996, *S.V. et al. v. Canada*, Views adopted on 15 May 2001 (complainant brutally assaulted by soldiers and beaten about the head until he lost consciousness).

[o] Counsel refers to the report of the Special Rapporteur on the question of torture (A/56/156): "It is the Special Rapporteur's opinion that serious and credible threats, including death threats, to the physical integrity of the victim or a third person can amount to cruel, inhuman or degrading treatment or even to torture, especially when the victim remains in the hands of law enforcement officials" (para. 8).

[p] Counsel refers to the case law of the European Court of Human Rights, which has considered that, in order to establish whether treatment is degrading, it is necessary to determine whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with article 3 of the European Convention on Human Rights. The Court concluded that obliging a person to strip naked in the presence of a person of the opposite sex shows a clear lack of respect for the individual concerned, who is subjected to a genuine assault on his or her dignity (see *Valašinas v. Lithuania*, application No. 44558/98, ECHR 2001-VIII, and *Iwańczuk v. Poland*, application No. 25196/94, 15 November 2001).

[q] See footnote f above.

[r] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), paras. 97 and 98. Counsel points out that these concerns were referred to by the Human Rights Committee in its concluding observations on Tunisia's report in 1995 (*Official Records of the General Assembly, Fiftieth Session, Supplement No. 40* (A/50/40), paras. 79-98).

[s] Including those expressed by the Committee against Torture and the Human Rights Committee after their consideration of the State party's reports.

[t] Counsel refers to communications No. 187/2001, *Dhaou Belgacem Thabti v. Tunisia*, Views adopted on 14 November 2003, para. 10.4; No. 60/1996, *Baraket v. Tunisia*, Views adopted on 10 November 1999, para. 11.7; and No. 59/1996, *Encarnación Blanco Abad v. Spain*, Views adopted on 14 May 1998, para. 8.6.

[u] Communication No. 187/2001, *Dhaou Belgacem Thabti v. Tunisia*, Views adopted on 14 November 2003, para. 10.4.

[v] Communication No. 6/1990, *Henri Unai Parot v. Spain*, Views adopted on 2 May 1995, para. 10.4.

[w] Communications No. 59/1996, *Encarnación Blanco Abad v. Spain*, cit., para. 8.6; No. 113/1998, *Ristic v. Yugoslavia*, Views adopted on 11 May 2001, paras. 9.6-9.8; and No. 6/1990, *Henri Unai Parot v. Spain*, *cit.*, para. 10.4.

[x] Counsel refers to the jurisprudence of the Human Rights Committee (communications No. 563/1993, *Nydia Erika Bautista de Arellana v. Colombia*, Views adopted on 27 October 1995, para. 8.2; and No. 778/1997, *José Antonio Coronel et al. v. Colombia*, Views adopted on 24 October 2002, para. 6.2) and of the European Court of Human Rights (*Assenov et al. v. Bulgaria*, Judgment of 28 October 1998, *Reports of Judgments and Decisions, 1998-VIII*; *Aydin v. Turkey*, Judgment of 25 September 1997, *Reports of Judgments and Decisions, 1997-VI*; and *Aksoy v. Turkey*, Judgment of 18 December 1996, *Reports of Judgments and Decisions, 1996-VI*).

[y] Counsel refers to the jurisprudence of the Human Rights Committee (communications No. 749/1997, *McTaggart v. Jamaica*, Views adopted on 31 March 1998, para. 10; No. 540/1993, *Ana Rosario Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 10; and No. 84/1981, *Barbata et al. v. Uruguay*, Views adopted on 21 October 1982, para. 11).

[z] Counsel refers to communication No. 161/2000, *Herrera v. Colombia*, in which the Committee considered that, even though article 16, paragraph 1, makes no mention of article 14 of the Convention, the State party nevertheless has an obligation to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention (Views adopted on 2 November 1987, para. 9.6).

[aa] "... the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case …".

[bb] The State party attaches a registration certificate and an unofficial translation into French: "The registrar responsible for the fourth investigations office of the court of first instance in Tunis hereby certifies that the case registered as No. 5873/4, concerning the investigation of an unknown person in accordance with article 31 of the Code of Criminal Procedure, for the purposes of determining the circumstances of the arrest of Ms. Saadia Ben Ali on 22 July 2004 and the alleged events in relation thereto, is still under investigation."

[cc] Communication No. 336/1988, *Fillastre and Bizouarn v. Bolivia*, Views adopted on 5 November 1991, para. 5.2.

[dd] Communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views adopted on 18 November 1993.

[ee] The complainant refers to the Views of the Human Rights Committee on the following communications: No. 1353/2005, *Njaru v. Cameroon*, Views adopted on 19 March 2007; No. 1208/2003, *Kurbonov v. Tajikistan*, Views adopted on 16 March 2006; and No. 760/1997, *Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000.

[ff] The complainant refers to the jurisprudence of the Human Rights Committee (communication No. 147/1983, *Arzuada Gilboa v. Uruguay*, Views adopted on 1 November 1985).

[gg] The complainant refers to her initial communication, as well as the chapter on Tunisia in Human Rights Watch, *World Report 2007* , in which it is stated that: "Prosecutors and judges usually turn a blind eye to torture allegations, even when the subject of formal complaints submitted by lawyers." (p. 520).

[hh] The State party cites an annex in Arabic attached to its observations.

[ii] Idem.

[jj] Idem.

[kk] See United States Department of State, *2007 Country Reports on Human Rights Practices*, "Tunisia", 11 March 2008.

[ll] The complainant cites the medical certificates attached to the initial complaint.

[mm] See 2007 Country Reports on Human Rights Practices … (note kk above); Human Rights Watch *World Report 2008*; the concluding observations of the Human Rights Committee on Tunisia (*Official Records of the General Assembly, Sixty-third Session, Supplement No. 40* (A/63/40), para. 77); and the European Court of Human Rights judgement of 28 February 2008 in the case of *Saadi v. Italy*, application No. 37201/06.

[nn] Communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views adopted on 18 November 1993, para. 13.5 [delay of 15 months].

Communication No. 285/2006

Submitted by: A.A. et al. (represented by counsel)

Alleged victims: The complainants

State party: Switzerland

Date of complaint: 9 January 2006

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 2008,

Having concluded its consideration of complaint No. 285/2006, submitted to the Committee against Torture by A.A. et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following Decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant, A.A., an Algerian national of Palestinian origin born in 1971, is currently awaiting deportation from Switzerland. His complaint is also submitted on behalf of his wife and their five children, born between 2001 and 2007. He claims that their forced return to Algeria would constitute a breach by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as presented by the complainants

2.1 In 1997, the complainant was working as a bodyguard for K.A., a very influential retired Algerian army general. One day, on arriving at the General's home, he found the General and several other persons gathered around a corpse. The General threatened him if he did not remain silent. In 2000, he decided to marry, and his family encouraged him to quit his job. The General wanted to prevent the marriage from taking place, out of fear that the complainant might decide to break his silence. He demanded that the complainant either remain in his job and not get married, or leave the country.

2.2 The complainant left Algeria with his wife in November 2000. They stayed illegally in the Libyan Arab Jamahiriya until June 2001 and then returned to Algeria. Notwithstanding the precautions they took, the General learned of their return and again threatened the complainant. In March 2002, unknown persons opened fire on his house and, the same evening, he was arrested. He was held incommunicado for one week, during which he was interrogated and ill-treated. He believes that the General was behind his arrest and subsequent detention.

2.3 On 2 September 2002, the complainant left Algeria with his family and went to Switzerland. One month earlier, he had applied for a passport, which he received on 18 August 2002. The following day, he also obtained a visa for Switzerland. Following his departure, he was summoned by the Algerian police on three occasions: on 26 September 2002, on 6 October 2002 and on 28 May 2003.

2.4 According to the complainant, the Swiss Embassy in Algiers verified the authenticity of the documents he submitted and sent a report on the matter to the Federal Office for Migration. This report confirmed the identity of the complainant and the fact that he had worked for General K.A., thus corroborating his account.

2.5 On 19 September 2002, the complainant filed an application for asylum. On 31 January 2005, his application was rejected. His appeal of 3 March 2005 was also rejected, on 20 October 2005.

2.6 The complainant has submitted to the Committee a medical report dated 14 February 2006 stating that he is suffering from depression due to post-traumatic stress. Since the rejection of his asylum application, his mental health has deteriorated and he is displaying suicidal tendencies.

The complaint

3.1 The complainant asserts that he was summoned by the police on three occasions and that, according to the third summons, dated 28 May 2003, he was required to appear before a judge on 3 June 2003. This implies that he is to be put on trial, probably at the instigation of General K.A. The summons gives no indication, however, of the charges.

3.2 The complainant fears that, if he is sent back to Algeria, he will face a grave risk of torture and ill-treatment in the meaning of articles 1 and 16 of the Convention. Given the influence of General K.A. in public life in Algeria, public officials were undoubtedly responsible for, or at least consented to or acquiesced in, the events described. The risks faced by the complainant must also be seen in the light of the situation of human rights in Algeria. In this regard, the complainant concludes that his removal to Algeria would be contrary to article 3 of the Convention. He also fears for his life, and it is for this reason that his mental health has deteriorated.

State party's observations

4.1 In its observations of 7 July 2006, the State party maintains that the complainant has not produced evidence that he faces a foreseeable, real and personal risk of being tortured in the event of his removal to Algeria. He has not provided the Committee with any new evidence calling into question the decisions of the Swiss Asylum Appeals Commission (CRA) dated 20 October and 23 December 2005 and 16 January 2006.

4.2 The complainant claims that, in February-March 2002, he was arrested by hooded civilians, who held him for one week in a location unknown to him, where he was interrogated and ill-treated. However, his account of the circumstances of his arrest and his alleged detention lacks credibility. For example, he is unable to describe the interrogations to which he was subjected, and his explanations of the grounds for his arrest remain vague. Moreover, except for his alleged arrest, he has never had any problems with the Algerian authorities.

4.3 The State party does not dispute the existence of the sequelae from which the complainant is suffering, but considers it highly unlikely that they were caused by acts of torture. Indeed, the medical certificate indicates various possible reasons for the complainant's condition, the doctor who examined him saw him only once and, apart from the medical certificate, there is no evidence of the alleged ill-treatment. In addition, during the proceedings before the domestic authorities, the complainant made no reference to the medical certificate.

4.4 The complainant affirmed that he had not been politically active in Algeria. By his own account, his membership of the Fatah movement in the years 1987-1997 in the Syrian Arab Republic and Lebanon - prior to his stay in Algeria, therefore - constituted his only political activity. The State party concludes therefrom that the complainant does not face any risk of being subjected to treatment inconsistent with article 3 on grounds of political activities.

4.5 The complaint before the Committee consists mainly of statements and evidence already put before CRA. This authority noted that neither the police summonses, nor the letter of corroboration from a former work colleague of the complainant's, referred to prosecutorial measures in the meaning of the law on asylum and that these documents were not sufficiently significant to justify a review. For example, the police summonses are virtually silent on the legal grounds and reasons for which the complainant is being sought. Likewise, the undated written testimony of his former work colleague contains no important new information. In addition, it is surprising, to say the least, that the complainant should have submitted this evidence only after the completion of the normal domestic procedures, that is, after the CRA decision of 20 October 2005.

4.6 After considering the case, CRA highlighted numerous inconsistencies that have not been explained by the complainant, either before the national authorities or before the Committee. Several events, as described by the complainant, are illogical or contrary to general experience. It should have been very much in K.A.'s interests for the complainant to remain in Algeria, under his control. Indeed, it is unlikely that the complainant would have waited several months to leave Algeria after quitting his job if he had felt seriously threatened by K.A. Similarly, if K.A. had been as influential as the complainant describes, it is doubtful that the latter would have encountered no particular problems for more than six months following his return to Algeria in June 2001. Lastly, one month prior to his departure from Algeria, the complainant was issued an Algerian passport, which he presented at the border control on exiting the country. He fails to explain, however, why the security authorities would have allowed him across the border when he was supposedly the object of persecution exposing him to a risk of torture, as demonstrated, according to the complainant, by the police summonses. Nor does he elucidate how his alleged detention remains relevant today, putting him at risk of torture.

4.7 The Swiss authorities characterized the complainant's allegations regarding the existence of a criminal inquiry pending against him as lacking credibility. Even if his claim that he is being sought by the police and risks arrest in the event of his return were credible, article 3 of the Convention offers no protection to a complainant who alleges merely that he fears being arrested on returning to his country.

4.8 In the light of the implausibilities and inconsistencies identified, which are not indicative of a person who actually experienced the problems and treatment alleged, the Swiss authorities ordered the removal of the complainant and his family members to their country of origin, having first meticulously examined the lawfulness, enforceability and practicability of such a measure. On the basis of this examination, there is nothing to indicate the existence of substantial grounds for fearing that the complainant would face a specific and personal risk of being tortured on his return to Algeria.

Complainants' comments

5.1 On 8 September 2006, the complainant informed the Committee that, following his request for the reconsideration of his asylum application, the Swiss authorities had suspended the removal procedure. In support of his new application, the complainant's lawyer had submitted a medical report indicating that the complainant was displaying suicidal tendencies, owing to the profound depression and the post-traumatic disorder from which he was suffering. The complainant attributed these problems to his experiences during his detention in Algiers.

5.2 Regarding the police summonses, the complainant does not know why the grounds were not stated. Nor is he aware of the grounds themselves. As to the observation made concerning his failure to leave Algeria sooner, he maintains that he did not have a passport and that it took time to obtain one. He had to complete all the procedures required for leaving the country in secrecy, so that K.A. would not learn of his intentions and prevent his departure. He stresses the authenticity of the letter from his former colleague indicating that the complainant is still being sought by the police. He also emphasizes that the Swiss authorities should not draw conclusions about his state of health without first having him examined by a doctor.

5.3 Subsequently, the complainant transmitted to the Committee a copy of a medical certificate dated 19 July 2007 stating that his depression and suicidal tendencies had worsened significantly and that he was emotionally unstable. It further stated that he was taking medication and that confinement to a mental hospital should be considered. In addition, he was engaging in violent behaviour, raising fears for his children's physical safety. His state of health was attributable to the trauma he had suffered and the precariousness of his situation in Switzerland.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that there is no obstacle to admissibility, which is not challenged by the State party. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the removal of the complainants to Algeria would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of such assessment, however, is to determine whether the individuals concerned would personally risk torture in the country to which they would return. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture on his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person may not be subjected to torture in his or her specific situation.

7.3 The Committee recalls its general comment No. 1 (1996) on article 3, which states that the Committee must assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if removed to the country concerned.[a] The risk need not be highly probable, but it must be personal and present.

7.4 As to the burden of proof, the Committee again recalls its general comment on article 3 and its case law, which state that the burden is generally on the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.5 In the present case, the complainant asserts that, in 2000-2001, he was threatened by his former employer, a retired Algerian army general, and that, in 2002, he was arrested, held incommunicado for one week and ill-treated. He claims that, subsequently, he was summoned by the police on three occasions. The State party points out that his account of the circumstances of his arrest and his alleged detention lacks credibility, that he has been unable to describe the interrogations to which he was subjected and that his explanations of the grounds for his arrest have remained vague. The State party also refers to the lack of evidence of a link between his current state of health and the ill-treatment he claims to have suffered. As to the police summonses, no information is available concerning the reasons for which the complainant is supposedly being sought. The Committee notes that the account submitted by the complainant does not shed any light either on the conditions of his previous detention or on the reasons for which he is being sought by the police now, several years after his departure from Algeria. The Committee takes note of the psychiatric reports submitted by the complainant stating that he is suffering from profound depression and a severe post-traumatic disorder. The main question, however, is whether he currently runs a risk of torture. It does not automatically follow that, several years after the alleged events occurred, he would still be at risk of being subjected to torture if removed to Algeria in the near future.[b]

7.6 Taking into account all information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture if deported to his country of origin.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainants to Algeria would not constitute a breach of article 3 of the Convention.

Notes

[a] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX.

[b] See communication No. 309/2006, *R.K. et al. v. Sweden*, Views adopted on 16 May 2008, para. 8.5.

Communication No. 306/2006

Submitted by: E.J. et al. (represented by counsel)

Alleged victims: The complainants

State party: Sweden

Date of the complaint: 24 October 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2008,

Having concluded its consideration of complaint No. 306/2006 submitted to the Committee against Torture on behalf of E.J. et al., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are E.J. et al., all Azerbaijani citizens and currently awaiting deportation from Sweden to Azerbaijan. They claim that their deportation would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel.

1.2 On 26 October 2006, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainants to Azerbaijan while their case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedure. On 27 September 2007, the State party acceded to this request.

The facts as presented by the complainants

2.1 On 14 January 2001, E.J, who was a student in Baku, joined the Azerbaijan Democratic Party (ADP), an opposition party aiming at establishing democracy in Azerbaijan and defending human rights. E.J. occupied several posts in the party, including party secretary in the Nerimov District between 18 March and 21 October 2001. Subsequently, he became an "instructor" and was responsible for "strategic questions and education". According to the complainants, as a consequence of his active participation in the ADP, E.J. was expelled from his university and from the professional basketball team in which he was playing.

2.2 On 21 June 2003, E.J. was arrested while demonstrating in Baku. He was brought to the police station where he was detained with other ADP members for ten days. He claims to have been exposed to physical abuse by two policemen. In particular, he claims that he was kicked and hit repeatedly with a truncheon over his body every day for periods of 30 minutes, until he was released on 1 July 2003.

2.3 On 16 October 2003, E.J. was arrested a second time while demonstrating against the alleged irregularities of the presidential elections. He was found guilty for having hit a policeman, which he denies. He was then sentenced to fifteen days and detained for this period. He claims that he was subjected to repeated severe physical abuse, as a result of which he once lost consciousness. He does not describe the type of treatment received but says that it was carried out in the same way as during his first arrest but was more severe. He contends that, while in detention, he was put under pressure by the authorities to end his political activities within the ADP.

2.4 The complainants argue that E.J.'s arrests, the humiliation and the severe physical abuse he was exposed to were not only the results of his involvement in the demonstrations, but were related to his active participation in the ADP. He is convinced that the authorities wanted to set an example to dissuade others from engaging in political activities.

2.5 In the beginning of 2004, E.J. and his wife claim to have been constantly threatened by the authorities. Following such threats, A.J. who was pregnant at the time became very stressed and had to undergo a Caesarean section during which their son was born with disabilities. On 20 May 2004, E.J. took part in yet another demonstration, during which the police arrived and beat demonstrators with truncheons. Some demonstrators were arrested but E.J. managed to escape.[a] Subsequently, he and his family fled to the Russian Federation and then to Sweden where they applied for asylum on 12 August 2004.

2.6 On 31 May 2005, the complainant's application for asylum was rejected by the Migration Board. The Board noted that Azerbaijan was a member of the Council of Europe (CoE) and has undertaken legal reforms to ensure the respect for human rights. It did not contest the facts presented by the complainants but found it unlikely that E.J. would face a risk of persecution if he returned to Azerbaijan, where several political opponents had recently been released. The complainants appeal to the Aliens Appeals Board was rejected on 1 November 2005. The complainants' application for permanent residence permits on humanitarian grounds was also denied on 25 July 2006 and a request for review of this decision was rejected on 17 August 2006.

2.7 As to the general human rights situation in Azerbaijan, the complainants provide copies of reports from Human Rights Watch, dated January 2006, Amnesty International, dated 2005 and the International Helsinki Federation for Human Rights, dated 2006. All reports denounce a consistent pattern of gross, flagrant and mass violations of human rights particularly towards political opponents.

The complaint

3. The complainants claim that Sweden would violate article 3 of the Convention in deporting them to Azerbaijan, as there is a real risk that E.J. will be subjected to torture, on account of his membership and activities on behalf of the ADP.

State party's submissions on admissibility and merits

4.1 On 27 September 2007, the State party challenged the admissibility and merits of the complaint. It confirms that the complainants have exhausted domestic remedies but argues that the complaint is inadmissible, as it is manifestly ill-founded, and is an abuse of the right of submission on account of the submission of documents which the State party claims are not authentic. If the Committee considers the complaint admissible, the State party denies that it would violate the Convention by deporting the complainants to Azerbaijan.

4.2 The State party refers to the Committee's jurisprudence[b] that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk. It also refers to the Committee's jurisprudence[c] that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In addition, it is for the complainants to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable.[d] It draws the Committee's attention to the fact that several provisions of both the 1989 Aliens Act and the new Aliens Act, which came into force in March 2006, reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. It points out that the Swedish authorities therefore apply the same kinds of test as the Committee when examining complaints under the Convention.

4.3 The State party submits that great weight must be attached to the decisions of the Swedish migration authorities, as they are well placed to assess the information submitted in support of an asylum application and to assess the credibility of an applicant's claims. The State party therefore relies on the decisions of the Migration Board and the Aliens Appeals Board. In January 2007, it requested the assistance of the Swedish Embassy in Ankara regarding some of the issues raised in this case. The Embassy engaged the services of a human rights lawyer in Baku, who has many contacts among human rights organisations and opposition political parties in Azerbaijan. The results of this investigation were set out in a report dated 19 March 2007: according to Akif Shahbazov, the former chairman of the ADP, E.J. was never a member of the ADP; the claim that E.J. was expelled from university due to his membership of a political party is incorrect, as according to the director of the university he was expelled for having failed to pay his fees; and E.J. is not wanted by the Azerbaijani authorities; and finally there are no past or current proceedings registered against him.

4.4 As to the documents provided by the complainants, the report of 19 March 2007 states that: Akif Shahbazov denies having signed the document allegedly issued by the ADP, denies that E.J. is a member of the ADP, and states that the ADP has no record of this document; what are referred to as "arrest letters" dated 21 June 2003 and 16 October 2003, are translated as "judgements" by the lawyer in question, are not recorded in the court's register and the judges who are alleged to have signed them deny having done so; and finally the document issued by the police of Baku on 22 May 2004 is considered to be a forgery, as it contains several formal and stylistic errors, there is no record of such a summons at the police authority register, the name of the person on the summons never worked as an investigator in the department in question, and, in any event, such a summons could only have been issued by investigators of the Military Prosecutor's Office and not by the police of Baku.

4.5 On the basis of this report, the State party concludes that the documents invoked in support of E.J's membership, activities and positions in the ADP, his alleged arrests in 2003, and his claim to be wanted by the police for his involvement in the demonstration allegedly held in May 2004, are not authentic. This report also supports the conclusion that: there is no judgement against E.J.; he is not wanted by the authorities in Azerbaijan; he has never been active in the ADP; and his account of his alleged political activities, the two episodes of arrest/imprisonment and the claim that he is wanted by the police, are all fictitious. There is nothing to support the submission that E.J. would risk arrest and torture upon return to Azerbaijan on account of his past political activities or for any other reason. Even if the State party were to assume that E.J's account of his past political activities are accurate, he has not shown substantial grounds for believing that he and his family would run a real and personal risk of being subjected to treatment contrary to article 3 if deported to Azerbaijan. The ADP is an officially registered and legal political organization, membership of which is not considered a criminal offence. He has not held a leading position in the party and his alleged activities are not of such significance that he would attract particular interest on the part of the Azerbaijani authorities upon return. In addition, his activities are alleged to have taken place between January 2001 and May 2004 - more than four years ago. Any claims of a risk of torture should also be viewed in light of the presidential pardons in 2005. On the issue of past abuse the State party draws the Committee's attention to the fact that the complainants have failed to adduce any evidence, medical or otherwise, in support of these claims.

4.6 With regard to the general human rights situation in Azerbaijan, the State party points to its membership of the Council of Europe, and its ratification of several major human rights instruments including the Convention against Torture. Azerbaijan has made progress in the field of human rights and around 100 police officers were punished for human rights abuses in 2006. The office of a national ombudsman has been established and a new action plan for the protection of human rights was announced by President Aliyev in December 2006. As the Swedish Migration Board noted in its decision of 31 May 2005, a number of persons defined by the Council of Europe as political prisoners were released by Azerbaijan. This occurred following several presidential pardons in 2004 and 2005, including, in the spring of 2005, of the ADP leader Mr. S. Jalaloglu.

4.7 The State party does not underestimate any legitimate concerns that may be expressed with respect to Azerbaijan's human rights record and notes reports of human rights abuses, including arbitrary detentions and incidents of beatings and torture of persons in custody by the security forces, particularly of prominent activists, and concern for the freedom of the media and the freedom of expression. Members of the opposition have been arrested and sentenced to fines or detention in court proceedings that reportedly failed to meet the standards for due process. According to estimates by non governmental organizations, the Azerbaijani Government held approximately 50 political prisoners in 2006. Leaders of the opposition who have been released from prison have been prohibited from continuing their political activities and several members of the opposition have lost their jobs and have been prevented from obtaining employment. However, it shares the view of the Migration

Board that the situation in Azerbaijan at present does not warrant a general need for protection for asylum-seekers from that country.

Complainants' comments on the State party's observations

5.1 On 16 March 2008, the complainants commented on the State party's response. They reiterate their previous arguments, and reaffirm that E.J.'s account of the events in Azerbaijan was consistent throughout the asylum process and never questioned by the authorities. His credibility was neither contested by the Migration Board or the Aliens Appeal Board, both of which acknowledged the facts as presented by him but concluded that he was arrested due to his participation in the demonstrations and not because of his position in the ADP. They admit that due to errors of translation the documents submitted by them to support their case were incorrectly defined as "arrest letters"/arrest warrants" and are in fact "judgements" as described by the State party.

5.2 The complainants submit that it is hard to contest the credentials of the lawyer engaged by the Swedish Embassy in Ankara, since no specific information is given about him. They question whether this lawyer is independent and, without any relation to the current regime, and highlight the widespread corruption which, they claim, must be taken into account when assessing the veracity of this lawyer's findings.[c] They question how this lawyer obtained this information without connections to the current regime. As to the information from A.S., that E.J. was never a member of the ADP, the complainants argue that the State party has provided no written evidence to this effect, but that this information was only provided orally. They regret that they have been unable to contact Mr. Shabazov themselves to deny that he made such a statement but claim that since his son was imprisoned in Azerbaijan, it has been impossible to reach him. As to the information given by the director of E.J.'s ex-university, the complainants explain that it stands to reason that a director of a state-controlled organ would never admit that a politically active person was expelled, as such a confession would be an admission that persecution on the basis of political opinion exists. They also deny that E.J. ever had to pay university fees, due to his athletic achievements. The complainants reiterate that the judgements are genuine and cannot understand why the judges in question deny having signed them. They argue that they may have been threatened inter alia by the Government to make such false statements. In short, the State party is only basing its decision on the findings of one person - the lawyer who drafted the report.

5.3 The complainants submit that the fact that the ADP is an officially registered and legal organization in Azerbaijan does not *de facto* constitute a guarantee that E.J. will not be arrested and tortured upon return. ADP members have been arrested and tortured before and a number of well known sources report that the government still persecutes political opponents, whether they are registered or not. E.J. held a leading position in the party, compared to ordinary members, in that he was party secretary for the Nerimov District, and subsequently appointed instructor during which time he also became responsible for "strategic questions and education". However, the complainants also argue that being at a lower level within a party makes it easier for the authorities to persecute the individuals concerned as, unlike internationally well-known leaders, such individuals do not have the protection of the international community. In their view, the authorities will be even more suspicious if E.J. returns after four years and thus more likely to be arrested and tortured. As to the State party's argument that the complainants have provided no evidence of past torture, the complainants contend that it is for the Committee to consider whether they will be subjected to torture upon return now and should thus be forward looking.

5.4 As to the State party's view that there is no general need for protection of asylum-seekers from Azerbaijan, the complainants submit that they never made this claim, but rely on their argument that E.J. is currently personally at risk. They question whether the Swedish migration authorities apply the same kind of test as the Committee when considering an application for asylum under the 1989 Aliens Act, as the test applied is one of a "well-founded fear" rather than "substantial grounds" for believing that an applicant would be subjected to torture, as in the Convention. According to the complainants, the decisions of the authorities should be regarded as "standard decisions" with regard to asylum-seekers from Azerbaijan claiming persecution on grounds of political belief. On the general human rights situation in Azerbaijan, the complainants submit that the situation has deteriorated and refers to two reports from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the Human Rights Council, in the basis of which the complainants' consider that there is a consistent pattern of gross, flagrant and/or mass violations of human rights within the meaning of article 3 of the Convention, in Azerbaijan.[f] They also refer to the Ministry of Foreign Affair's report of 2006, which states that as a whole the human rights situation did not improve in 2006. It underlines the existence of torture and ill-treatment, restrictions on the freedom of speech, the oppression of civil society, police brutality and arbitrary arrests.

State party's supplementary submission

6. On 22 September 2008, the State party submits that it has in several previous complaints before the Committee asked for the assistance of one of its embassies in order, inter alia, to verify information or documents submitted by the complainants concerned, in particular, in relation to asylum-seekers from Azerbaijan. From the Views of the Committee in these cases,[g] it is evident that the reports from the Embassy in Ankara also include findings that verify information submitted by the concerned complainant as well as the authenticity of documents invoked. The State party submits that the Embassy in Ankara is well aware of the importance of the integrity and discretion of the person chosen, as well as the sensitivity of the issues involved. The Embassy normally uses external expertise for its reports in these cases, it exercises great caution in selecting suitable persons to assist it and the persons chosen are independent of the authorities and political parties in Azerbaijan. On this occasion, the Embassy used the services of a human rights lawyer in Baku who has a wide network of contacts among human rights organizations and opposition political parties in Azerbaijan. The State party is of the view that it is legitimate not to identify the lawyer engaged for security reasons and states that his services were previously used in relation to another case decided by the Committee: *Z.K. v. Sweden*, communication No. 301/2006, Views adopted on 9 May 2008, paragraph 4.5. In addition, the conclusions presented in the report are supported by verifiable facts.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainants have complied with article 22, paragraph 5 (b).

7.4 The State party submits that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it fails to rise to the basic level of substantiation required for purposes of admissibility and is an abuse of the right of submission given the non-authentic nature of the documents submitted by the complainants to support their claims. The Committee is of the opinion that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility considerations alone.

7.5 Accordingly, the Committee finds the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the complainants' removal to Azerbaijan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that they would be in danger of being subjected to torture.

8.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable, it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.[h] The Committee also recalls from general comment No. 1 that considerable weight will be given, to exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of fact that are made by organs of the State party concerned; but that the Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.4 The Committee notes that in its arguments against the claims advanced, the State party makes reference to information presented in a report, dated 19 March 2007, provided to it by the Swedish Embassy in Ankara, following an investigation by a person whose name has not been reveal by the State party. It also notes that this investigation took place after the termination of domestic proceedings and that the author has not had an opportunity either to contest the information provided therein or to challenge the investigator whose name has not been revealed before the domestic authorities. For these reasons, the Committee considers that the State party should not have relied upon this information in considering whether there is a real and personal risk of torture for the complainants, and indeed the Committee itself does not intend to take the contents of this report into account in its consideration of this communication.

8.5 The Committee notes the claim that there is a risk that E.J. would be tortured or ill-treated if deported to Azerbaijan, because of his past political activities, and the claim that he was previously subjected to torture and ill-treatment. On the latter issue, the Committee notes that the complainants have failed to adduce any evidence that E.J. was subjected to torture or ill-treatment in Azerbaijan and also notes their sole response to the State party's argument on this point that the Committee should be forward looking in assessing whether there is a current risk of torture or ill-treatment.

8.6 As to E.J.'s alleged involvement in political activities, the Committee notes that although he was a member of ADP, it does not appear that he was in a leading position, and thus would not attract the particular interest of the Azerbaijani authorities if returned. Nor is there any evidence that he has been involved, while in Sweden, in any activity which would attract the interest of the same authorities four years after he left Azerbaijan. In this regard, the Committee also notes that the activities in which he was alleged to have been involved took place between January 2001 and May 2004 - more than four years ago. It notes further that a number of persons defined by the Council of Europe as political prisoners have been released by the Azerbaijani authorities, following presidential pardons, in particular of the ADP leader himself and that this has not been contested by the complainants.

8.7 In the Committee's view, the complainants have failed to adduce any other tangible evidence to demonstrate that E.J. would face a foreseeable, real and personal risk of being subjected to torture if returned to Azerbaijan. For these reasons, and in light of the fact that the other complainants' case is closely linked to, if not dependent on, that of E.J., the Committee concludes that the other complainants have also failed to substantiate their claim that they would also face a foreseeable, real and personal risk of being subjected to torture upon their return to Azerbaijan. The Committee therefore concludes that their removal to that country would not constitute a breach of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainants' removal to Azerbaijan by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] During his first interview, E.J produced the following documents: an identity card, ADP membership, three political party documents and two what he refers to as "arrest warrants". He provides no explanation of these documents.

[b] Communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3, and communication No. 213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3.

[c] Communication No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

[d] General comment No. 1 (1996) on article 3 of the Convention, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX; communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.4 and communication No. 265/2005, *A.H. v. Sweden*, Views adopted on 16 November 2006, para. 11.6.

[e] The complainants refer to studies carried out by the Organisation for Economic Cooperation and Development (OECD) and the Group of States against Corruption of the Council of Europe (GRECO) to demonstrate their argument on the level of corruption in Azerbaijan.

[f] It is not clear to which reports the complainants are referring. No information is provided by the complainants in this regard.

[g] The State party refers to: *A.H. v. Sweden*, communication No. 265/2005, Views adopted on 16 November 2006; *E.R.K. and Y.K. v Sweden*, communications Nos. 270/2005 and 271/2005, Views adopted on 30 April 2007; and *E.V.I. v. Sweden*, communication No. 296/2006, Views adopted on 1 May 2007; and *Z.K. v. Sweden*, communication No. 301/2006, Views adopted on 9 May 2008.

[h] Communication No. 296/2006, *E.V.I. v. Sweden*, Views adopted on 1 May 2007; communication No. 270 and 271/2005, *E.R.K. and Y.K. v. Sweden*, Views adopted on 30 April 2007.

Communication No. 316/2007

Submitted by:	L.J.R. (represented by J.L.B.)
Alleged victim:	The complainant
State party:	Australia
Date of the complaint:	5 April 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 2008,

Having concluded its consideration of complaint No. 316/2007, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complaint is submitted by L.J.R., a citizen of the United States born in 1971. When the complaint was submitted, L.J.R. was in prison in Australia and an extradition order to the United States of America was pending against him. He claimed that his extradition to the United States, would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1.2 By letter dated 10 January 2008, the State party informed the Committee that the complainant had been surrendered to the United States on 9 January 2008.

The facts as presented by the complainant

2.1 The complainant was arrested in Orange, New South Wales, Australia, on 19 September 2002 under a provisional arrest warrant. On 12 November 2002, the Minister for Justice and Customs received an extradition request from the United States of America in relation to one count of murder allegedly committed by the complainant in May 2002, as he was the subject of a felony complaint before the Superior Court of California, San Bernardino, Barstow District. The request indicated that, pursuant to article V of the Treaty on Extradition between Australia and the United States of America, the District Attorney would not seek or impose the death penalty on the complainant. In December 2002, a magistrate determined that the complainant was eligible for surrender and committed him to prison pending the completion of the extradition proceedings.

2.2 The complainant unsuccessfully challenged the magistrate's decision or his eligibility to surrender in the Supreme Court of New South Wales, the Full Court of the Federal Court, and the High Court. At issue, inter alia, was the application of section 22(3) of the Extradition Act of 1988, under which the eligible person can only be surrendered in relation to a qualifying extradition offence if, inter alia:

(a) The Attorney-General is satisfied that there is no extradition objection in relation to the offence;

(b) The Attorney-General is satisfied that, on surrender to the extradition country, the person will not be subjected to torture;

(c) Where the offence is punishable by a penalty of death - by virtue of an undertaking given by the extradition country to Australia, one of the following is applicable:

(i) The person will not be tried for the offence;

(ii) If the person is tried for the offence, the death penalty will not be imposed on the person;

(iii) If the death penalty is imposed on the person, it will not be carried out.

2.3 Before the Federal Court, the complainant, inter alia, claimed that he would be subjected to torture in California, and that his trial would be prejudiced because of race and religion, as he was a Hispanic-Muslim. He alleged that the United States law enforcement authorities had intentionally released prejudicial pretrial publicity against him. In particular, he referred to the America's Most Wanted programme, featuring his case, which identified him as the deceased's killer, and to discussion about his case in on-line chat rooms created in California, which demonstrated that the local population was hostile towards him.

2.4 The adverse publicity had been obtained by prison guards in Australia and released to other inmates. This had led to him being physically and sexually assaulted by prison guards and other prisoners on numerous occasions over a 12 month period while detained at Long Bay prison. In particular, he claims that he was poisoned by unknown persons; burned with hot water by other prisoners; hit over the head by other prisoners and then dragged; his cell bed was defecated on by police dogs; he was forced to strip naked and pose as a statue; threatened by a prison guard to be placed into an area with violent inmates. After one incident, he was hit and had to be given stitches to the head, as documented in hospital records. In December 2003 he was transferred to the Silverwater Remand Centre. In April 2004, after he was called a "piece of shit" by a prison guard, he filed a formal complaint. As a result, he was beaten by a group of guards. He reported another incident of beatings by prison guards which occurred in January 2005.

2.5 According to the complainant, these alleged attacks demonstrated the likelihood that he would be treated similarly in a United States prison, which would amount to torture under section 22(3)(b) of the Extradition Act. He also provided written submissions regarding prison conditions in California, including the high rate of HIV infection. The risk of him contracting HIV or hepatitis C was very high, due to the adverse publicity his case had received, rendering him more vulnerable to physical and sexual assaults. Furthermore, he provided documents as evidence of racial segregation and discrimination in the Californian prison system.

2.6 The complainant also claims that he risked being placed in solitary confinement, sentenced to death, despite the assurances given, and being subjected to a lengthy period of detention on death row. The District Attorney in California had specified that based on the facts, he would be seeking a First Degree Murder verdict from the jury for wilful, deliberate and premeditated murder, which carries a sentence of twenty-five years to life in prison.

2.7 The Embassy of the United States provided diplomatic assurances on 28 February 2005, stating that, based on the information provided by the Deputy District Attorney, the United States "assures the Government of Australia that the death penalty will not be sought or imposed" against the complainant. A further assurance was given by the new District Attorney in California later in 2005, which stated that the District Attorney's Office "will not seek to impose the death penalty on [L.J.R.] on the instant matter". The complainant claimed that as it is the jury which makes a decision as to the death penalty, even without an express endorsement of the prosecutor or judge, the assurances were irrelevant. A 'special circumstance', namely that the murder was committed during an offence of kidnapping, means that the penalty in his case could be death.

2.8 The complainant indicates that he is a Hispanic-Muslim accused of killing a white woman in Barstow, a predominantly white conservative community of San Bernardino County, largely made of Anglo-Christians. There is also a large presence of the military in Barstow, as it is very close to the Yermo Marine base, where he and the deceased person worked. The accusations against him, including information on his previous military convictions, were given extended coverage in local newspapers, radio and television. Hispanics and Muslims are significantly underrepresented and systematically excluded from jury service in Barstow. Furthermore, they are discriminated against in the community and there is a systematic pattern of incitement for hate crimes against them.

2.9 The complainant claims that, while investigating the murder in question, the police searched his house. As the search did not yield any result, he was taken to the Sheriff's station for questioning. He was then handcuffed, put into an unmarked police car and driven to a remote site where he was assaulted in order to obtain information about the murder. The extradition request indicated that there were marks of injuries on his body when he was arrested by the police and implied that such injuries were the result of the struggle with the deceased person. However, there was nothing in the autopsy report allowing the conclusion that such a struggle had taken place.

2.10 In support of his allegations that torture is widespread in the United States, the complainant alleges that between December 1998 and February 2000, when he was in the Army, he was held in a military prison on counts of disobedience to the military authorities, and tortured. As a result, several military guards were reprimanded and one was relieved of duty.

2.11 After the dismissal of the complainant's appeal by the Federal Court, on 16 June 2004, the Minister for Justice and Customs signed, on 31 August 2006, the surrender warrant. On 21 December 2006, the Federal Court dismissed the complainant's application for review of the Minister's decision. The Court deemed, inter alia, that it was not for it to determine whether the complainant might be tortured or whether the complainant could mount a successful extradition objection based on his race or religion. These were matters to be considered by the Minister. In that respect, no reviewable error by the Minister had been demonstrated.

2.12 In its decision on a further appeal, dated 9 August 2007, the Federal Court indicated that, under section 22(3)(b) of the Extradition Act, the Minister for Justice and Customs must be satisfied that, on surrender to the extradition country, the person will not be subjected to torture. The Minister concluded that the materials provided by the complainant did not establish that the conditions in the United States prisons were such that they should be regarded as cruel or inhumane or to involve degrading treatment or punishment. In short, they did not establish that the treatment of prisoners amounted to torture. The Court held that it was not for it to determine whether L.J.R. might be tortured and that, in any event, mistreatment or abuse in prison did not amount to torture.

The complaint

3.1 The complainant claims that his extradition to the United States would constitute a breach of article 3 of the Convention. He claims to have exhausted all domestic remedies, including a complaint with the Human Rights and Equal Opportunity Commission of Australia (HREOC).

3.2 He also claims that while being held in Australian prisons, he was subjected to treatment amounting to torture and cruel, inhuman or degrading treatment or punishment by other inmates or by prison guards. However, he does not invoke particular articles of the Convention. In the context of his opposition to the extradition, he addressed these claims to the Federal Court, New South Wales District. He also addressed them to HREOC.

State party's observations on admissibility and merits

4.1 On 29 November 2007, the State party provided observations on admissibility and merits. It submits that the allegations made in relation to article 3 should be ruled inadmissible as manifestly unfounded in accordance with rule 107(b) of the Committee's rules of procedure. In the alternative, the State party submits that the allegations should be dismissed as inadmissible on the grounds that the communication is incompatible with the provisions of the Convention, pursuant to article 22(2) of the Convention and rule 107(c) of the rules of procedure. Further, the State party submits that there is no evidence to support the complainant's allegations with regard to article 3 and that the allegations are therefore without merit.

4.2 Regarding the complainant's allegations of torture or inhuman or degrading treatment or punishment in Australian prisons, they should be declared inadmissible for being manifestly unfounded in accordance with rule 107(b) of the rules of procedure. As there is no evidence to support them, they are without merit.

4.3 As for the complainant's allegations that he will not receive a fair trial in the United States because of his race and religion, they fall outside the Committee's mandate. Accordingly, they should be declared inadmissible as incompatible with the provisions of the Convention.

4.4 The State party submits that, in addition to proving that an act would constitute torture under the Convention, in order to show that a State party would be in breach of its non-refoulement obligations under article 3, an individual must be found to be personally at risk of such treatment. It is not sufficient to show that there is a consistent pattern of gross, flagrant or mass violations of human rights occurring in the receiving state. Additional grounds must be adduced to show that the individual concerned would be personally at risk. The onus of proving that there is a foreseeable, real and personal risk of being subjected to torture upon extradition or deportation rests on the applicant. The risk need not be highly probable, but it must be assessed on grounds that go beyond mere theory and suspicion.

4.5 The State party submits that the complainant has not provided sufficient evidence in substantiation of his claim that, by extraditing him, Australia will breach article 3 of the Convention. He simply asserts that there is racial segregation, violence and a high level of disease in Californian prisons and that prisoners are subjected to solitary confinement and police brutality, without providing credible evidence to support these assertions. The communication does not provide any credible evidence that there is a "consistent pattern of gross, flagrant or mass violations of human rights" in the United States.

4.6 The complainant's argument appears to be that there is such a degree of certainty that all inmates will be subjected to alleged ill-treatment that, undoubtedly, he personally will be subjected to that treatment after extradition. However, even the unreliable statistics cited in the complaint do not demonstrate any certainty that a prisoner in the United States will be subjected to the alleged treatment. There is thus no evidence in the case demonstrating that the complainant would be subjected to a foreseeable, real and personal risk of the alleged treatment if extradited.

4.7 The treatment and conditions that the complainant asserts he will face if extradited to the United States, even if proven, would not amount to torture under the definition in article 1 of the Convention. Nor does the communication demonstrate that any pain or suffering would be intentionally inflicted upon him for one of the reasons set out in article 1 of the Convention, or would be inflicted by or at the instigation of or with the consent or acquiescence of a public official, or person acting in an official capacity. Accordingly, the State party submits that the complaint is inadmissible as incompatible with the provisions of the Convention.

4.8 The State party submits that the complaint does not even on a *prima facie* base substantiate the allegation that the complainant will be segregated from persons of other racial backgrounds in a Californian prison, or that this would constitute torture under the Convention. In the alternative, it submits that this allegation is inadmissible as incompatible with the provisions of the Convention. Even if the allegation of racial segregation were proven, it would not amount to torture under the Convention. Furthermore, there is nothing to suggest that by extraditing the complainant to the United States, where he may be segregated from prisoners of other racial backgrounds for a period, he would be in danger of torture. There is no evidence to suggest either that the policy of racial segregation in Californian prisons was intended to inflict severe pain and suffering for reasons based on racial discrimination. It therefore does not constitute torture under the Convention. There is no evidence to suggest that the intention of the policy of segregation in prisons is anything other than preventing violence.

4.9 Regarding the allegation that the complainant would be exposed to violence and sexual assault in prison, there is no evidence that he would be personally at risk of such violence. Furthermore, such violence would not amount to torture under article 1, given the lack of any requisite intent. There is no evidence in the complainant's submissions or otherwise to suggest that the conditions in Californian prisons amount to "institutionalised torture by government authorities". There is no evidence either to indicate that the complainant would be personally or particularly at risk of being the victim of sexual violence. The State party is not aware of any evidence that there is a consistent pattern of gross, flagrant or mass violations of human rights occurring in Californian prisons. The Human Rights Committee, in its concluding observations to the United States' reports under the International Covenant on Civil and Political Rights in 1995 and 2006, did not express concern that violence amongst or towards the prison population in the United States may amount to torture.[a]

4.10 The Committee against Torture expressed concern in its concluding observations of 2000 on the report of the United States about ill-treatment in prisons. However, the Committee used the term "ill-treatment" and not "torture", implying that conditions in United States prisons over the reporting period did not amount to "torture". Furthermore, the Committee's concerns regarding prison conditions related to sexual and other violence, which the Committee noted was more likely to be committed against "vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation". Persons of Hispanic origin comprise over 50 per cent of the prison population in California, so there is no reason to suspect that the complainant is a likely victim of such violence.

4.11 The State party further notes that the physical and sexual abuse of prisoners is unlawful in all states of the United States and that under section 206 of the Californian Penal Code, persons who commit torture are liable to prosecution and a maximum penalty of life imprisonment. Therefore, there are no grounds to believe that the complainant would be in danger of being subjected to torture due to exposure to prison violence in the United States.

4.12 Regarding the risk of contracting an infectious disease in a Californian prison, the State party submits that the allegation should be declared inadmissible as manifestly unfounded. No evidence is provided which demonstrates that the complainant is personally at risk of contracting such a disease. Therefore, there is insufficient evidence on which to base a *prima facie* case. In the alternative, the State party submits that the allegation is inadmissible as incompatible with the provisions of the Convention. Even if the contentions regarding the prevalence of Tuberculosis, Hepatitis-C and HIV in Californian prisons and likelihood of the complainant contracting one of those diseases were true, there is no basis on which to believe that those conditions are imposed on prisoners with the intention of inflicting pain or suffering, for one of the purposes set out in article 1, at the instigation of, or with the consent or acquiescence of, a public official. Thus, the State party would not be in violation of its obligations under article 3 of the Convention.

4.13 Regarding the merits of this allegation, the complainant does not present credible evidence regarding the risk of contracting an infectious disease in a Californian prison. After searching a range of information sources, the State party was unable to locate reliable statistics on the rates of Hepatitis-C and Tuberculosis infection in US prisons. As for HIV, the United States Department of Health reported at the end of 2005 that the estimated prevalence of HIV in incarcerated populations was 2 per cent. Such an infection rate does not amount to a "substantial risk" of the complainant being infected.

4.14 As for the allegations of solitary confinement, the State party submits that it should be considered inadmissible as manifestly ill-founded. The claim is based on mere speculation as to what might occur if the complainant were convicted and sentenced to imprisonment and cannot be taken to amount to *prima facie* evidence that the facts asserted will in fact occur. In the alternative, it should be declared inadmissible as incompatible with the provisions of the Convention. Even if the claim was substantiated, solitary confinement does not in itself constitute torture, or cruel, inhuman or degrading treatment or punishment, and must still meet the definition in article 1 of the Convention. There is no evidence to suggest that "solitary confinement" is used in Californian prisons in any way other than incidentally to lawful sanctions. As to the merits of such allegation, the State party has no reason to believe that solitary confinement is used generally, or would be used in the complainant's case specifically.

4.15 The complainant alleges that he suffered injuries at the hands of United States law enforcement and that this is evidence that he will be tortured if extradited. The State party submits that this allegation should be declared inadmissible as manifestly unfounded. No evidence is provided to corroborate the complainant's story, which lacks in detail and clarity. The date and time of the alleged assault remain unclear. The San Bernardino County Sheriff's Department appears to have documented each interview and encounter that they had with the complainant on 15 and 16 May 2002. There is no indication that the events to which the complainant refers occurred.

4.16 In the alternative, the State party submits that there are no substantial grounds to believe that the complainant would be in danger of torture if extradited based on his allegation to have been assaulted by United States law enforcement officers. The detailed police reports of United States law enforcement officials' encounters with the complainant on 15 and 16 May 2002 do not substantiate his claims. The reports also indicate that facial injuries were observed on the complainant the first time law enforcement contacted him, before the alleged assault took place.

4.17 The complainant claims that he will be subjected to long detention on death row if extradited, which would amount to torture. This allegation should be considered inadmissible as manifestly ill-founded. The State party received assurances from the US that the death penalty will not be sought or imposed in the complainant's case. He does not present evidence to suggest that these assurances are unreliable and the State party has no reason to consider that they will not be upheld. The Deputy District Attorney in the matter advised the State party in an affidavit that there are no aggravating circumstances to the case and that it does not attract the death penalty. On 28 February 2005, the

United States provided an undertaking that the death penalty would not be sought or imposed on the complainant. He did not provide evidence to discredit these assurances. The United States has provided death penalty undertakings in the same form on previous occasions. The United States has sought his extradition for a single offence of murder. In accordance with the speciality assurance under article XIV of the Treaty on Extradition between Australia and the United States of America, the complainant cannot be charged with further offences once extradited, without Australia's consent.

4.18 The complainant claims that during his time in Long Bay Correctional Complex between December 2002 and December 2003, he was subjected to treatment amounting to torture or other cruel, inhuman or degrading treatment or punishment. The complainant does not point to an obligation under the Convention that the State party is alleged to have breached. However, the State party responds to these allegations in case they are considered to raise issues under articles 12, 13, 14 and 16.

4.19 The complainant availed himself frequently of a number of complaint mechanisms in connection with such allegations, including a complaint to the HREOC. However, his claims are manifestly ill-founded. First, he does not provide evidence to support his allegations, many of which lack detail and specificity. Second, records do not substantiate such claims. In some instances, there is no record of a complaint filed, or any medical records, or witness evidence to support the claim. Where records exist, the incidents in question do not constitute torture or cruel, inhuman or degrading treatment or punishment. Medical records do not bear out the allegations of physical abuse. There are only two occasions of attendance for treatment: a case where he was assaulted by another inmate and taken promptly for treatment by prison staff, and a case involving use of handcuffs, where there was no injury and no treatment was required.

4.20 In May 2005, HREOC reported that the complainant's allegations up to August 2003 were not substantiated, or did not amount to abuses of his rights. HREOC also received new complaints for the period between August 2003 and May 2006. However, it declined to proceed with these claims in view of the fact that the complainant had also lodged proceedings in the New South Wales (NSW) Supreme Court on substantially similar allegations.

4.21 Whilst being held on extradition remand, the complainant had a history of making unfounded, exaggerated and false complaints relating to his treatment. For instance, in his complaint to HREOC, he claimed to have been hit with a taser gun by prison officers at Long Bay in June 2003. This claim cannot possibly be true given that those officers do not have taser guns. He reported to the Department of Corrective Services (DCS) that he was assaulted by a prison officer on 28 December 2002. He referred to this treatment as "torture" in his complaints to HREOC and in applications to the Minister. In fact, he alleged that, after a verbal confrontation with a prison officer, the officer "poked" the complainant in the chest with his finger. The incident was witnessed by another prison officer and a number of other inmates. On investigation it was found that the complainant had repeatedly refused t follow the officer's directions, that no physical force was used by the officer and that any physical contact was inadvertent. The complainant did not sustain any injuries from the incident, nor did he require medical attention. He has been held in protective custody, at his own request, for much of the time he has been held in NSW prisons. At his request, he has only been associating with a limited number of approved prisoners. This makes it unlikely that many of his allegations regarding his treatment by other prisoners are true. Regarding other allegations, he does not provide sufficient information for the State party to be able to address them. There are no dates provided, no information about the circumstances of each allegation and no indication as to the persons involved in each alleged incident. Sometimes he relates to actions of other prisoners, and there is no indication of any involvement of officials which might constitute official instigation, acquiescence or consent.

4.22 DCS records show that on 22 September 2003, he was involved in a fight with another inmate during which he was hit over the head with a milk crate. The incident was immediately reported to police by prison staff. The complainant completed a report stating that the action or inaction of prison officers was not a cause of his injury. There is no evidence that prison officers were involved in, instigated or consented to the assault. He was taken promptly to the Long Bay Correctional Centre Clinic for treatment and from there was transferred to hospital, where he received stitches to his head and was discharged on the same day. He was seen again in the Clinic for follow up care on three occasions. HREOC considered the incident and concluded that there was no evidence that prison staff caused or condoned the incident.

4.23 The complainant attended the Silverwater Correctional Centre Clinic on 5 January 2005 complaining he had been bashed and handcuffed too tightly during a search for contraband. He was examined by clinical staff who found only reddened skin on his wrists. No treatment was required. This matter was raised in his second complaint to HREOC, which has since been discontinued.

Complainant's comments on the State party's observations on the admissibility and the merits

5. On 4 February 2008, the complainant' representative submitted that she did not wish to add anything to what had already been submitted to the Committee.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes that the State party does not contest the exhaustion of domestic remedies.

6.2 The Committee notes the complainant's allegations that he will not have a fair trial and that, despite the assurances given, he might be sentenced to death. These allegations, however, fall outside the scope of the Convention in the circumstances of the case. Accordingly, the Committee considers that part of the complaint inadmissible as incompatible with the provisions of the Convention. As for the rest of the allegations, the Committee notes the State party's objections to the admissibility, namely that the claims are unfounded or incompatible with the provisions of the Convention. However, it considers that such claims raise issues that must be dealt with at the merits stage. Accordingly, it considers such claims admissible and proceeds to their examination on the merits.

6.3 Regarding the complainant's claim that he was subjected to treatment amounting to torture and cruel, inhuman or degrading treatment or punishment while imprisoned in Australia, the Committee notes that the description of facts provided by the complainant lacks precision and that no detailed information is provided by him on the legal proceedings initiated regarding the incidents he refers to and the result of such proceedings. In these circumstances the Committee considers that, for the purpose of admissibility, the claim is unfounded, under rule 107 (b) of the Committee's rules of procedure.

Consideration of the merits

7.1 The issue before the Committee is whether the extradition of the complainant to the United States would violate the State party's obligations under article 3 of the Convention not to extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment on article 3, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned to the country in question. The risk of torture need not be highly probable, but it must be personal and present. As to the burden of proof, the Committee also recalls its general comment on article 3 and its jurisprudence which establishes that the burden is generally upon the complainant to present an arguable case. Furthermore, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.4 The complainant claims that he will be at risk of torture if extradited to the United States in view of, inter alia: (a) the prejudicial publicity against him identifying him as the author of the crime for which extradition is requested; (b) prison conditions in California, including the high incidence of HIV and other infectious diseases, and the risk of him contracting such diseases; (c) racial segregation and discrimination in the Californian prison system; (d) the discrimination against Hispanics and Muslims in his community; (e) the fact that he was tortured by police to obtain information about the murder he is accused of, and that torture is widespread in the United States; (f) the possibility for him to be placed in solitary confinement and, if sentenced to death, to be subjected to a lengthy period of detention on death row.

7.5 The Committee is aware of reports of brutality and use of excessive force by US law-enforcement personnel and the numerous allegations of their ill-treatment of vulnerable groups, including racial minorities. It is also aware of numerous reports of sexual violence perpetrated by detainees on one another and that appropriate measures to combat these abuses have not been implemented.[b] However, the complainant's allegations remain of a general nature. He does not provide specific evidence about the ill-treatment he alleges to have been subjected to when questioned by the Californian police. No significant evidence is provided either that the conditions in the prison or prisons in which he would be held in California generally amount to torture within the meaning of article 1 of the Convention, or that the circumstances of his case are such that he would be subjected to treatment falling under that provision. Furthermore, the State party considered that the United States was bound by the assurances it provided to the effect that the author, if found guilty, would not be sentenced to the death penalty.

8. For the above-mentioned reasons, the Committee concludes that the complainant has failed to substantiate his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to the United States.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the extradition of the complainant to the United States did not constitute a breach of article 3 of the Convention.

Notes

[a] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40* (A/50/40), paras. 266-304; ibid., *Sixty-first Session, Supplement No. 40* (A/61/40), para. 84.

[b] A/61/40 (see note a above), para 84, (32) and (37).

Communication No. 324/2007

Submitted by:	Mr. X (represented by counsel)
Alleged victim:	The complainant
State party:	Australia
Date of the complaint:	2 May 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 April 2009,

Having concluded its consideration of complaint No. 324/2007 submitted to the Committee against Torture on behalf of Mr. X under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The author of the communication dated 2 May 2007 is Mr. X, a Palestinian born in Lebanon in 1960, detained at the Villawood Detention Centre (Australia). He sought political asylum in Australia; his request was rejected, and he risks forcible removal to Lebanon. He claims that by deporting him, Australia would violate his rights under article 3 of the Convention against Torture. He is represented by counsel.

1.2 While registering the communication on 27 June 2007, and pursuant to rule 108 of its rules of procedures, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to expel the complainant while his case is under consideration.

The facts as presented by the complainant

2.1 The complainant is a Christian and former member of the Lebanese armed forces. In 1975, then aged 15, he joined the Christian Democrats (Phalangists) militia. In 1982, his unit participated in the Sabra and Chatila massacre.

2.2 Shortly afterwards, he became a close assistant to the militia's leader, Mr. Z; he became aware of a number of illegal acts. He also travelled with Mr. Z to Switzerland to deposit funds stolen from Phalangist militia in various bank accounts, including on one on his own name. As he feared he might be harmed, he began to make copies of sensitive documents to protect himself. In 1984, the Phalangist party changed allegiance from Israel to Syria. The party then split into two factions: one headed by

Mr. Z, in favour of Syria, and a second which the complainant supported. He feared that Mr. Z would begin to threaten him.

2.3 In July 1988, the complainant travelled to Germany and was granted asylum there. He learned that members of the Phalangist militia participant in the Sabra and Chatila massacre had been attacked and killed by other groups, including Fatah and Hezbollah. He was not concerned, as he thought that people in Lebanon believed him to be dead.

2.4 Later in 1998, Mr. Z located the complainant in Germany and began to threaten him, his wife, and their children, causing his wife to leave him. The complainant then paid several German police officers to protect his wife and children. Later, he was arrested and charged with attempting to bribe police officers. He was sentenced to four years and three months imprisonment by the Regional Court of Dusseldorf.

2.5 The complainant feared that the publicity surrounding his conviction would draw the attention of the Lebanese authorities. After his release, he obtained a false Slovenian passport and an Australian tourist visa and travelled to Australia in March 2002. On 7 October 2002, he applied for asylum. His application was rejected by the Department of Immigration and Citizenship on 20 August 2003. The Department found that he was not a refugee as article 1F (a) and (b) of the 1951 Convention excludes protection for those for whom there are serious reasons for considering that they have committed (a) crimes against peace, war crimes, or crimes against humanity; (b) a serious non-political crime.

2.6 The Department found that the complainant's involvement in the massacre of Sabra and Chatila constituted a war crime and a crime against humanity. His alleged embezzlement of money, and tax evasion in Germany and his conviction there, were found to give rise to "serious reasons" for considering that he had committed serious non-political crimes outside Australia.

2.7 The complainant appealed the Department's decision, and on 29 April 2005, the Administrative Appeals' Tribunal reversed the Department's findings in relation to article 1F (a), holding that there was insufficient evidence to support the conclusion. The Tribunal also reversed the Department's decision in relation to the tax dispute in Germany. The Tribunal confirmed, however, that article 1F (b) applied, as the complainant had stolen money from Mr. Z and was accessory to the theft by Mr. Z or as there were serious reasons to consider that he had committed these crimes, and he had bribed German police officers.

2.8 On 9 November 2005, the complainant requested the Minister of Immigration and Citizenship to exercise his discretion to substitute a more favourable decision under section 501J of the Migration Act. On 31 July 2006, the Minister declined to intervene.

2.9 The complainant also received a letter from a German Public Prosecutor's Office, attesting that he had collaborated with the authorities by bringing to their attention details on the organized crime what contributed to the prosecution of a number of criminals, and for that he might be the victim of retaliation.

2.10 The complainant also applied to the Office of the United Nations High Commissioner for Refugees (UNHCR), requesting a letter of support. UNHCR allegedly replied that it sent such a letter to the Department on 15 February 2007, but the complainant claims that he is unaware of its content.

2.11 The complainant also managed to obtain a copy of the "International obligations and humanitarian concerns assessment" made in his case by the Department on 13 February 2006. On the basis of that assessment, a second request was sent to the Minister to exercise his discretion under section 501J of the Migration on 2 May 2007. The Minister rejected the request 13 June 2007. The complainant thus exhausted all available domestic remedies.

The complaint

3. The complainant claims that in the event of his forced removal to Lebanon, there are substantial grounds for believing that he would face torture there, in breach of his rights under article 3 of the Convention. He points out that a number of governmental and non-governmental reports argue that torture is common in Lebanon and that certain groups are more vulnerable to abuses than others. He contends that as a former Phalangist and Christian who attracted the attention of the authorities, he is at high risk of being subjected to torture in Lebanon. He claims that he could also be tortured by Palestinian groups there due to his past activities.

State party's observations on admissibility and merits

4.1 On 29 May 2008, the State party contended that the complainant's allegations are inadmissible as manifestly unfounded. The allegations concerning torture by Palestinian groups are incompatible with the Convention's provisions. If the Committee found the case admissible, the complainant's allegations are to be considered without merit, as they have not been supported by evidence and the communication does not take into account recent developments in Lebanon.

4.2 After providing a Chronology of the events in the complainant's case until his arrival in Australia, in March 2002, the State party recalls that on 11 April 2002, he sought assistance at a Perth police station and was taken into immigration detention. On 7 October 2002, he lodged a Protection visa application, which was rejected on 20 August 2003 by the Department of Immigration and Citizenship (DIAC) on the basis that there were serious reasons for considering that he had committed war crimes or crimes against humanity and a serious non-political crime outside Australia, and he was thus excluded, under article 1F (a) and (b), from protection under the Refugee Convention. On 15 September 2003, he appealed against this decision to the Administrative Appeals Tribunal (AAT).

4.3 On 29 April 2005, the AAT concluded that it could not establish that the complainant had committed war crimes or crimes against humanity. It confirmed, however, that he was not entitled to a protection visa as he had committed serious non-political offences outside Australia.

4.4 In the meantime, in April 2005, the Syrian forces withdrew. Also in 2005, Parliamentary elections were held in Lebanon, and in July 2005 a new pro-independence Government, which includes members of the Lebanese Forces, was formed. In August 2005, the Government's 1994 resolution outlawing the Lebanese Forces was rescinded.

4.5 On 9 November 2005, the complainant asked the Minister for Immigration and Citizenship to exercise his discretion to grant him a visa. On 13 July 2006, the Minister decided that it was not in the public interest to intervene. On 2 May 2007, the complainant requested the Minister to exercise his/her discretion to grant him a visa in light of new information.

4.6 The State party recalls that article 3 enshrines an absolute obligation not to return a person to a State where there are serious grounds to believe that he/she would be in danger of being subjected to torture.[a] It refers to the Committee's jurisprudence that this obligation must be interpreted by reference to the definition of torture set out in article 1.[b] It also recalls that the definition of torture makes it clear that suffering constituting torture must be inflicted by/at the instigation of or with the consent/acquiescence of a public official or a person acting in an official capacity.

4.7 The State party recalls that the obligation of non-refoulement is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment.[c] While the boundary between torture and cruel, inhuman or degrading treatment or punishment is not always clear, the historical development of the concept shows that torture involves intentional harm and a degree of severity going beyond cruel, inhuman or degrading treatment or punishment.

4.8 The State party recalls that each case must be assessed individually. Whether conduct amounts to torture depends on the nature of the alleged act and must involve a degree of severity beyond cruel, inhuman or degrading treatment or punishment.[d] It is not sufficient that there is a 'consistent pattern of gross, flagrant or mass violations of human rights'; 'additional grounds must be adduced to show that the individual concerned would be personally at risk'.[e] The State party also recalls that the onus of proving that there is 'a foreseeable, real and personal risk of being subjected to torture' upon removal rests on the applicant.[f] The risk in question need not be 'highly probable', but it must be 'assessed on grounds that go beyond mere theory and suspicion'.[g]

4.9 The State party recalls that it is the responsibility of the complainant to establish a prima facie case for the purpose of admissibility. It contends that the complainant's allegation that he would be subjected to torture by the Lebanese authorities due to his former membership of the Christian Democrats or Lebanese Forces, his suspected misappropriation of Lebanese Forces funds, and his imputed pro-Israeli political opinion is inadmissible as manifestly unfounded, because he has failed to substantiate his claim on the existence of a personal and present risk, for him, in Lebanon.

4.10 In the State party's view, although the complainant has claimed that a number of circumstances place him personally at risk, he provides no evidence to show that under the conditions currently prevailing in Lebanon, he would attract the attention from the authorities for those reasons, or that this would amount to treatment which could be considered to be torture under article 1 of the Convention. The communication relies on outdated country reports and ignores that the Lebanese Forces are now part of the Government. The complainant provides no evidence that the authorities would have any reason to subject him to torture based on his former activities or based on his political opinions.

4.11 The State party notes the complainant's assertion that the publication of his involvement in the theft of the funds is likely to have attracted the authorities' attention, and thus he is at risk to be arrested and tortured. It notes that he has not provided evidence to show that his name was ever published, that his alleged involvement in the theft is known in Lebanon, that he is sought by the authorities, or that there would be any basis on which he could be detained or arrested in this relation. In addition, according to the State party, nothing shows that the complainant in fact ever misappropriated the funds in question. The complainant is said to have thus failed to substantiate his allegations, and is therefore manifestly unfounded.

4.12 In the alternative, the State party submits that there are no substantial grounds for believing that the complainant would be subjected to torture by the Lebanese authorities. It refers to the Committee's general comment pursuant to which '[t]he author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is *personal* and *present*. All pertinent information may be introduced by either party to bear on this matter' (emphasis added).

4.13 The State party notes that the communication provides a bit of information on the situation in Lebanon, dating from before 2005, and on the complainant's past. Although the International Obligations and Humanitarian Concerns Assessment of 13 February 2006 considered that it was possible that he might be exposed to torture upon return to Lebanon, subsequent assessment of the complainant's situation by the Australian authorities led to the conclusion that there were no substantial grounds for such conclusion.

4.14 The State party acknowledges the existence of information that torture remains a problem in Lebanon in relation to detainees, usually occurring during preliminary investigations at police stations or military facilities. Arbitrary arrests and detention of particular groups of people have also been reported. According to the State party however, much of the information provided by the complainant pre-dates 2005, when the Syrian forces left and Lebanon "made significant progress with respect to human rights under a democratically elected parliament and a reform-oriented government." In the State party's view, although serious human rights abuses, including torture, remain a problem, it is clear that the political and human rights situation has changed since 2005 in ways significant to the present case.

4.15 The State party observes that the complainant has claimed that a number of particular factors expose him personally to a risk of torture in Lebanon. It reiterates that available information on Lebanon shows that in terms of behaviour which might constitute 'torture' for the purposes of article 1 of the Convention, the risk in Lebanon mainly exists for detainees. The complainant would therefore need to demonstrate that he is personally at risk of being detained in Lebanon after his return.

4.16 With reference to the complainant's claim that because of his former membership of the Christian Democrats or the Lebanese Forces, he is at a 'high risk' of being tortured by the authorities, the State party acknowledges that Lebanon remains beset by ongoing political instability. The political environment is at an impasse with a stand-off between the coalition government of the Prime Minister and its opponents led by Hezbollah, in alliance with Christian Leader General Michel Aoun's Free Patriotic Movement. However, the Lebanese Forces form part of the current 'March 14 Alliance' Government, having won six seats of the 72 won by the ruling coalition in 2005, and one Minister is from the Lebanese Forces Party. According to the State party, there are therefore no substantial grounds for believing that a person would be subjected to torture by the authorities simply by virtue of his former membership of the Lebanese Forces.

4.17 The State party recalls that in support of his allegations, the complainant cites an non-governmental organization report, based on the situation under the previous Lebanese Government and occupation by Syrian armed forces. No information was provided about the political situation as it currently stands in Lebanon, and there is no evidence that the complainant would currently face persecution by the authorities due to his former membership of the Lebanese Forces.

4.18 The complainant has also explicitly referred to another non governmental organization report (2005), which notes that torture remains a problem in Lebanon. The examples given, however, are irrelevant to his situation. He has provided no evidence that former Lebanese Forces members are currently mistreated at the instigation of or with the consent or acquiescence of Lebanese authorities or by persons acting in an official capacity.

4.19 On the claim that the complainant's involvement in the theft of funds would expose him to torture upon return, the State party affirms that there are no grounds to believe that he would be personally at risk. He has provided no evidence that his involvement in the theft is known in Lebanon. Details of the theft were mentioned in a local German newspaper outlining his involvement in planting drugs, but his full name was never published. The State party explains that after a review of German newspapers, it found no articles mentioning his name.

4.20 The State party notes that Mr. Z is now deceased, and even if the complainant affirms to have spoken to Z's wife subsequently, there is no suggestion that she knew about the stolen money. The State party concludes that there are no grounds for believing that the complainant's involvement in the theft would increase the risk of being tortured by or at the instigation of, or with the consent or acquiescence of a public official in Lebanon.

4.21 The State party adds that even if the authorities are aware of the theft, the offence is no longer prosecutable and there is no evidence that he is pursued. As of 14 April 2008, there was no Interpol notice for him. This suggests that he has no substantive conviction in Lebanon, nor is he currently wanted for outstanding charges, nor is he under an arrest warrant. In addition, pursuant to the Lebanese Penal Code, the statute of limitations applicable for misappropriation and theft is ten years.

4.22 The complainant has also not demonstrated that the authorities are pursuing him in any way. He had cited information from his former wife, who was in Lebanon in 2003, and his mother in Lebanon in October 2005, that the police had sought information concerning him, but there is no evidence in corroboration. The complainant himself contacted the Lebanese Consulate in Sydney in October 2007, to request a travel document for himself, at the request of the Australian Government.

4.23 The State party notes that although the complainant does not explicitly claim that he would face a risk of torture at the hands of the authorities because of his involvement in the Sabra and Chatila massacre, there is nothing to suggest that he is sought in this relation. In addition, a 1991 General

Amnesty Law provides amnesty for war and humanitarian crimes committed before 28 March 1991, and applies to the massacre in question. According to information gathered by the State party, no Phalangists or Lebanese Forces party members alleged to have participated in the massacres have ever been charged. Nothing indicates that the current authorities detain or torture persons because of their involvement in the massacre, and nothing suggests that the new Government would have an interest in detaining anyone in this connection.

4.24 Even if any "pro-Israel" opinion could be imputed on the basis of a person's present or former membership of the Lebanese Forces, for the reasons provided in relation to the complainant's former membership of the Lebanese Forces above, there appears to be no basis for believing that the complainant would be personally and presently at risk from the authorities, for any opinion that might be imputed to him by virtue of his former membership in the Lebanese Forces.

4.25 The State party notes the complainant's claim that he would risk harm amounting to torture by Palestinian groups and Hezbollah due to his involvement in the Sabra and Chatila massacre, his promotion to the upper echelons of the party following them, and of his pro-Israeli opinions, and that the Lebanese Government has no control over the acts of such groups and would be unable to protect him from them.

4.26 This allegation, according to the State party, is incompatible with the Convention's provisions, as the acts the complainant alleges he will face do not fall within the definition of 'torture' set out in article 1 of the Convention. The State party adds that in *Elmi v Australia*,[h] the Committee considered that, in the exceptional circumstance where State authority was wholly lacking, acts by groups exercising quasi-governmental authority could fall within the definition of article 1. Three years later, however, the Committee found, in *HMHI v Australia* that, by then, a State authority existed in Somalia in the form of the Transitional National Government, which had initiated relations with the international community in its capacity as central Government, although some doubts may then have existed as to the reach of its territorial authority and its permanence. In that case, acts of non-state entities in Somalia did not fall within the exceptional situation in *Elmi*, and therefore fall outside the scope of article 3 of the Convention.

4.27 In the State party's opinion, despite constant political instability, Lebanon has a Government which cannot be seen to be wholly lacking a central authority. Therefore, the complainant's claim to be at risk of revenge attacks and harm by Palestinian groups or by Hezbollah falls outside the scope of the Convention and is thus inadmissible.

4.28 Although the complainant refers to his International Obligations and Humanitarian Concerns Assessment of 13 February 2006, and affirms that former participants in the massacres have been assassinated - including in countries outside Lebanon - in 2002, the State party points out that there is no evidence that such attacks still occur. There is no evidence that the complainant's involvement in the massacre was known in Lebanon. The Administrative Appeals Tribunal has concluded that there was no evidence that the complainant was directly involved in the massacre and that there were no reasons to believe that he had committed a war crime or crime against humanity. The Tribunal concluded that it was not implausible that he would have been promoted after the massacre because he was Palestinian.

4.29 The State party adds that the opposition in Lebanon, including Hezbollah, sees the formation of a national unity agreement. Hezbollah and the Free Patriotic Movement issued a joint statement on 6 February 2006, which stated "[t]o turn the page of the past and have a global national reconciliation, all the outstanding files of the war must be closed." The State party concludes that the complainant's claims in this connection are unsupported by evidence to demonstrate that in the current circumstances in Lebanon, there would be substantial grounds for believing that he would be subjected to torture by Palestinian groups or by Hezbollah.

Complainant's comments on the State party's observations

5.1 On 4 August 2008, the complainant affirmed that his initial submission contains sufficient information about the existence of a risk of torture if he is forcibly removed to Lebanon. He notes that the State party has observed that while in February 2006 the International Obligations and Humanitarian Concerns Association (ITOA) found that he would face a risk of torture if returned to Lebanon, this risk no longer existed at present. At the same time however, the State party acknowledges that Lebanon endures ongoing instability.

5.2 The complainant contends that despite recent changes in Lebanon, the situation has not been resolved to the extent that the risk of torture he faces has dissipated. Torture is not specifically prohibited under Lebanese law. Since ITOA assessment of 2006, there have been reports that the Lebanese authorities continue to perpetrate torture. According to the complainant, there is strong evidence to support the assertion that Lebanon remains unstable, and the authorities don't have full control over Palestinian militia groups.

5.3 The complainant notes that the State party contends that there is no evidence that he misappropriated funds from the Lebanese Armed Forces. The misappropriation of funds was used as one of the arguments to refuse him a protection visa by the Department of Immigration.

5.4 With respect to the State party's remark about the missing evidence that he is presently wanted in Lebanon, the complainant claims that regardless of whether or nor he is wanted, his return to, and presence in, Lebanon would suffice to attract adverse attention from the authorities and place him at risk of torture.

5.5 In relation to his fear of retribution from Palestinian militias, the complainant affirms that given his relationship with the Lebanese authorities, there is a real chance that the authorities would acquiesce in incidents of torture perpetrated against him by Palestinian militias, "insofar as they would (not) stop acts of torture perpetrated against" him by Palestinian militias were "they known by the Lebanese authorities".

5.6 The complainant concludes that the State party's observation that the Administrative Appeals Tribunal did not find that he had committed war crimes/crimes against humanity is irrelevant.

According to him, the mere perception or even suspicion by Palestinian groups that he was involved in the Sabra and Chatila massacre would be a sufficient ground for targeting him.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes that it is uncontested that domestic remedies have been exhausted and thus finds that the complainants have complied with article 22, paragraph 5 (b).

6.4 The State party submits that the communication is partly inadmissible as manifestly unfounded, and partly as some of the complainant's allegations fall outside of the scope of the Convention. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee finds the communication admissible.

Consideration of merits

7.1 The issue before the Committee is whether the complainant's removal to Lebanon would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he/she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 on article 3, which states that it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

7.4 On the issue of the burden of proof, the Committee recalls its jurisprudence to the effect that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion.[i]

7.5 In the present case, the complainant contends that he would be tortured if deported to Lebanon, on account of his past activities as a member of the Lebanese armed forces/Christian Democrats (Phalangists) militia, his participation in the 1982 Sabra and Chatila massacre, the theft of money belonging to the Lebanese armed forces, and his pro-Israel opinions. The State party has refuted these allegations as groundless and has pointed out that the Lebanese authorities are not looking for the complainant. The Committee further notes that the complainant has not presented any meaningful evidence to substantiate his allegations. There is no indication that Lebanese authorities are currently searching him. As far as his allegation about his possible persecution or torture by Palestinian groups due to his past activities and his pro-Israeli opinions, the Committee notes that, once again, the complainant has provided insufficient evidence to substantiate his claims.

7.6 The Committee has noted that different reports submitted by the parties argue that torture remains a problem in Lebanon. In the Committee's view, however, the complainant has not provided evidence that he is personally being targeted in Lebanon, by the authorities and/or by Palestinian or any other armed groups. The Committee therefore considers that the complainant has failed to demonstrate that he would face a *foreseeable*, *real* and *personal* risk of being subjected to torture in Lebanon (which acceded to the Convention on 5 October 2000) if returned there. For these reasons, the Committee concludes that the complainant's removal to Lebanon would not constitute a breach of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the complainant's removal to Lebanon by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] *Paez v Sweden*, communication No. 39/1996, 28 April 1997, 86, para. 14.5.

[b] *G.R.B. v Sweden*, communication No. 83/1997, 15 May 1998, para. 6.5.

[c] General comment No. 1 (1996) on article 3 of the Convention, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX, para. 1.

[d] Human Rights Committee, *Vuolanne v Finland*, communication No. 265/1987, 7 April 1989, para. 9.2; European Court of Human Rights, *Cruz Varas v Sweden*, 20 March 1991, series A, No. 241, *European Human Rights Reports*, 1992, 14:1-3, p. 37.

[e] Committee against Torture: *H.M.H.I v Australia*, communication No. 177/2001, adopted on 1 May 2002, para. 6.5.

[f] Committee against Torture, *A.R. v the Netherlands*, communication No. 203/2002, adopted on 14 November 2003, para. 7.3.

[g] Ibid.

[h] Communication No. 120/1998, decision adopted on 14 May 1999, para. 6.5.

[i] See, inter alia, communication No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; and No. 150/1999, *S.L. v. Sweden*, decision adopted on 11 May 2001, para. 6.3.

Communication No. 326/2007

Submitted by:	M.F. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	2 July 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2008,

Having concluded its consideration of complaint No. 326/2007, submitted to the Committee against Torture by M.F. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is M.F., a national of Bangladesh, born in 1983. He faces deportation from Sweden to Bangladesh. He claims that his deportation would constitute a violation by Sweden of articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel.

1.2 On 3 July 2007, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainant to Bangladesh while his case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On the same day, the State party acceded to this request.

The facts as presented by the complainant

2.1 The complainant lived with his family in the city of Munshigonj, Bangladesh. He was a member of the Awami League, one of the main political parties in the country. In this capacity, he took part in demonstrations and political meetings, distributed leaflets and put up posters. On 1 October 2001, the day of the general elections, the complainant and others were at a polling station, protesting about the fact that supporters of the Bangladesh Nationalist Party (BNP) were not allowing people to vote for the Awami League. The complainant was assaulted by BNP supporters with hockey sticks. The Bangladesh Rifles[a] subsequently closed the polling station.

2.2 On 20 October 2001, BNP supporters kidnapped the complainant and took him to a secret, isolated room in Islampur, where he was subject to severe ill-treatment. He was hit with truncheons on his back and burnt with cigarettes on his feet. He was released on 24 October 2001 and taken to Munshigonj City Hospital, where he was treated for burns and for injuries to his back. He was hospitalized until 26 December 2001.[b] After being informed that BNP supporters planned to assault him again, he left the hospital and went to Dhaka and then Chittagong. He complained to the police about this assault, but no action was taken.[c]

2.3 On an unspecified date in October/November 2002, the complainant was taken by BNP supporters and the police to a police station in Munshigonj. He was kept there for two days and he was allegedly tortured. He was released after his relatives bribed the police. After his release he stayed in the hospital for around 15 days and later travelled to Dhaka, where he stayed for six months.

2.4 On 23 May 2003, the complainant read in a newspaper that one of his friends had been murdered. Fearing for the complainant's security, his family decided that he should leave the country. With the assistance of a smuggler, the complainant left Bangladesh on 13 October 2003. Upon arrival in Sweden, on 14 October 2003, he applied for asylum. The Migration Board rejected his application on 3 March 2004. The Aliens Appeal Board confirmed this decision on 21 April 2005.

2.5 After the complainant's arrival in Sweden, the complainant's father allegedly was threatened several times and the family's house was vandalized. His father also informed him that the complainant was accused of the murder of a BNP supporter in Court Gaon, whose body was found on 25 May 2003.

2.6 On 8 February 2006, the complainant filed a new application for a residence permit. On 11 August 2006, the Migration Board rejected it. In the new application, he submitted new evidence, including two police reports and charge sheets, which showed that M.F. was among those charged for murdering a certain Mr. H. on 10 September 2001 and also that he was charged for attacking a BNP meeting with bombs in 2005.[d] He also submitted two letters from M.A.A., the complainants' lawyer in Bangladesh, who allegedly confirmed that the 2001 case had been completed and that life imprisonment or death penalty sentences could be expected. The complainant also referred to a number of reports regarding the general political situation in the country, the situation of the judiciary and the use of torture in Bangladesh.

2.7 In addition, the complainant submitted medical certificates by Dr. P.K., according to which he was treated for mental illness since mid-November 2005. Dr. P.K. concluded that the complainant's history of past ill-treatment and present mental health problems, including sleep disturbances, recurring nightmares, intrusive memories and anxiety, especially related to events reminding him of the trauma, fulfilled the criteria of Post Traumatic Stress Disorder (PTSD).

The complaint

3. The complainant claims that his deportation to Bangladesh would constitute a violation by Sweden of articles 3 and 16 of the Convention. He fears assassination by BNP supporters if returned to Bangladesh. He also fears being arrested and tortured by the police because of the accusations against him. He adds that the prison conditions in the country amount to cruel, inhuman or degrading treatment.

State party's observations on the admissibility and the merits

4.1 On 15 February 2008, the State party challenged the admissibility and merits of the complaint. On admissibility, and as regards article 3, it submits that the complaint is manifestly unfounded and therefore inadmissible. With respect to article 16, it submits that this part of the complaint should be declared inadmissible *ratione materiae* as incompatible with the provisions of the Convention. In addition, the State party submits that the complainant's claim on article 16 lacks the minimum substantiation required, for purposes of admissibility.

4.2 On the merits, the State party submits that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk.[e] As regards the current general human rights situation in Bangladesh, the State party acknowledges that it is problematic, but points to an improvement in the last few years. Nevertheless, violence is a pervasive feature of politics in the country and police reportedly use torture, beatings and other forms of abuse.

4.3 The State party also refers to the Committee's jurisprudence[f] that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned and that it is for the complainant to present an arguable case.[g] In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable. It draws the Committee's attention to the fact that several provisions of the Aliens Act, reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. It points out that the Swedish authorities therefore apply the same type of test as the Committee when examining complaints under the Convention.

4.4 The State party claims that the complainant's return to Bangladesh would not entail a violation of article 3 of the Convention. The complaint is founded on the claim the complainant risks torture upon return to his country of origin, due to his past arrest and torture on two occasions because of his political activity, once by BNP supporters and once by BNP supporters and the police. He claims that he also risks being arrested due to false accusations against him.

4.5 As regards the alleged risk of torture by political opponents, the State party refers to the definition of "torture" of article 1 of the Convention and to the requirement that torture be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". It recalls the Committee's jurisprudence that the issue of whether a State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the State, falls outside the scope of article 3.[h] In any event, the complainant has not substantiated his claim that he would run such a risk if returned to Bangladesh. In this regard, the State party notes that there is reason to question the credibility of the complainant's statements. In this context, it points to several factual inconsistencies, including inconsistencies on the dates of the alleged arrests. It also indicates that the complainant did not claim to have been subjected to torture at the first interview.

4.6 With respect to the risk of torture by the police, because of a previous instance when he was allegedly tortured by BNP supporters and the police at the Munshigonj police station in 2002, the State party notes that this event was not mentioned during the first interview with Swedish migration authorities. The events in question took place more than five years ago and there is nothing to indicate that his political opponents would have any interest in him at present. The complainant was not in a leading position in the party and any harassment on account of his political activities would have a local character and could be avoided by moving, as he did when he moved to Chittagong and Dhaka. The State party argues that, according to the Committee's jurisprudence,[i] the requirement for the torture to have occurred in the recent past has not been met.

4.7 Regarding the complainant's allegations that he risks arrest and torture on account of false accusations against him, the State party questions the credibility of his version. The complainant did not mention the murder accusations until his second interview with the Swedish migration authorities. In addition, the charge sheets submitted by the complainant over two years after he first mentioned the accusations do not refer to the murder that took place in May 2003, but to crimes allegedly committed in 2001 and 2005.[j] With the assistance of the Swedish Embassy in Dhaka, the State party was able to conclude that the police reports and charge sheets submitted by the complainant were not authentic. Indeed, a sub-director of the Munshigonj Magistrate Court indicated that the seals, signatures and contents of the charge sheets, police reports and the complaint allegedly filed by the author's father were forged. In addition, the case numbers referred to in those documents, when checked with the Court's register, were not related to cases involving the complainant. As regards the letters sent by the complainant's lawyer, they did not state a correct address, but that of a tribunal where hundreds of lawyers practice. Furthermore, the information on the letters sent by the complainant's lawyer does not coincide with the findings of the local investigations and contains fake case numbers, which could either not be verified or referred to a theft case unrelated to the complainant. The Swedish Embassy in Dhaka did not find any evidence that the complainant had been sentenced, prosecuted or accused for any of the crimes that he mentioned.

4.8 On the alleged violation of article 16, the State party recalls the Committee's jurisprudence[k] that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of said provision. It maintains that no such other factors are present in the instant case. It also draws the Committee's attention to the jurisprudence of the European Court of Human Rights,[l] which held that ill-treatment must attain a minimum level of severity for it to fall within the scope of article 3 of the European Convention on Human Rights and established that only where there are compelling humanitarian considerations at stake may the enforcement of an expulsion decision entail a violation of article 3. The State party submits that such exceptional circumstances do not exist in the present case.

4.9 The State party refers to the two medical certificates submitted by the complainant, which state that he has been treated for mental illness since 18 November 2005 and that he has seen the doctor on five occasions. That the complainant did not receive any treatment prior to November 2005 and that he did not invoke any medical evidence until his application was pending before the Aliens Appeal Board, may indicate that his mental condition deteriorated primarily as a consequence of the

Migration Board's decision to reject his asylum request. Furthermore, there are reports indicating that mental care is available in Bangladesh.[m] Consequently, the State party argues that the possible aggravation of the complainant's state of mental health due to his deportation would not amount to cruel, inhuman or degrading treatment.

5. On 11 September 2008, the complainant submitted that he did not have any comments on the State party's observations.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainant has complied with article 22, paragraph 5 (b).

6.4 Concerning the claim relating to the aggravation of M.F.'s mental condition on account of his expulsion to his country of origin, the Committee recalls its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.[n] The Committee notes the medical certificates presented by the complainant which state that he suffers from PTSD. The Committee also notes the State party's contention that mental health care is available in Bangladesh, a statement not refuted by the complainant. In the absence of exceptional circumstances and in view of complainant's failure to respond to the State party's argument that medical care was available in Bangladesh, the Committee considers that he has failed sufficiently to substantiate this claim, for purposes of admissibility, and it must accordingly be considered inadmissible.

6.5 With respect to the complainants' claim under article 3 of the Convention, the Committee finds no further obstacles to the admissibility of the complaint and accordingly proceeds with its consideration on the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the complainants' removal to Bangladesh would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Bangladesh, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 (1996) on article 3,[o] which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.[p] Furthermore, the Committee observes that considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of facts that are made by organs of the State party concerned; but that it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[q]

7.4 In the present case, the Committee observes that the main reasons for which the complainant fears a personal risk of torture if returned to Bangladesh are that he was previously subjected to torture for his membership in the Awami League by BNP supporters, and that he risks imprisonment and torture by the police upon return to Bangladesh because of his alleged homicide charges. In addition, the complainant states that, if convicted, he risks being subjected to inhuman or degrading treatment in prison.

7.5 As to his claims of past torture, the Committee notes that the assault of 1 October 2001, the kidnapping and torture of 20 October 2001 and the arrest and torture that took place in October/November 2002 allegedly involved BNP supporters. In this regard, the Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee recalls its jurisprudence that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.[r]

7.6 The Committee observes that the October/November 2002 events, allegedly involved torture by BNP supporters in collaboration with the State party's police. Even if the Committee were to accept the claim that the complainant was subjected to torture in the past, the question is whether he *currently* runs a risk of torture if returned to Bangladesh. It does not necessarily follow that, six years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Bangladesh in the near future.[s] In this regard, the Committee notes that, other than being wanted for alleged homicide charges, the complainant has failed to provide information on why he would be of interest to the local authorities.

7.7 In relation to the charges which the complainant contends were filed against him, the Committee notes the State party's submission that the charge sheets, police reports and letters submitted by the complainant are not authentic. It also notes the State party's contention that the complainant has not been sentenced, prosecuted for or accused of any of the crimes alleged by him. The complainant has not contested these observations, nor has he submitted any evidence to the contrary, even though he was given the opportunity to do so. In this regard, the Committee recalls its jurisprudence that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion.[t]

7.8 In view of the above, the Committee does not consider it necessary to examine the complainant's allegation that he risks inhuman or degrading treatment if imprisoned in a Bangladeshi prison on account of the above-mentioned charges.

7.9 On the basis of the information submitted, the Committee considers that the complainant has not provided sufficient evidence that would allow it to consider that he faces a foreseeable, real and personal risk of being tortured if he is expelled to his country of origin.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainant to Bangladesh would not constitute a breach of article 3 of the Convention by the State party.

Notes

[a] Part of the Bangladeshi armed forces.

[b] Please note that a "release certificate" allegedly issued by the hospital states that the complainant was hospitalized from 25 September 2001 to 26 December 2001.

[c] There are contradictory statements as to whether a complaint was filed or not.

[d] The complainant states that the fact that this second crime took place while he was in Sweden proves that it was a false accusation.

[e] Communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3.

[f] Communication No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

[g] *S.L. v. Sweden* (note e above), para. 6.4.

[h] Communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5.

[i] Communication No. 191/2001, *S.S. v. the Netherlands*, Views adopted on 5 May 2003, para. 6.6.

[j] See paras. 2.5 and 2.6.

[k] Inter alia, *G.R.B. v. Sweden* (note h above); communication No. 49/1996, *S.V. v. Canada*, Views adopted on 15 May 2001, para. 9.9; communication No. 220/2002, *R.D. v. Sweden*, Views adopted on 2 May 2005, para. 7.2.

[l] *Cruz Varas and others v. Sweden*, judgment of 20 March 1991 (Series A no. 201, para. 83); *Bensaid v. the United Kingdom*, judgment of 6 February 2001, (Reports of Judgments and Decisions 2001-I, p. 319, para. 40); and *D. v the United Kingdom*, judgment of 2 May 1997, (Reports of Judgments and Decisions 1997-III, p. 793, paras. 51-54).

[m] Home Office, Border and Immigration Agency, Country of Origin Information Report: Bangladesh, published 31 August 2007, para. 28.09.

[n] See *G.R.B. v. Sweden* (note h above), para. 6.7; communication No. 183/2001, *B.S.S. v. Canada*, Views adopted on 12 May 2004, para. 10.2; and communication No. 245/2004, *S.S.S. v. Canada*, Views adopted on 16 November 2005, para. 7.3.

[o] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/40), annex IX.

[p] Communication No. 203/2002, *A.R. v. the Netherlands*, Views adopted on 21 November 2003, para. 7.3.

[q] General comment No. 1 (note o above), para. 9.

[r] See, inter alia, *G.R.B. v. Sweden* (note h above); *S.S. v. the Netherlands* (note i above), para. 6.4; communication No. 138/1999, *M.P.S. v. Australia*, Views adopted 30 April 2002, para. 7.4.

[s] *S.S.S. v. Canada* (note n above) and communication No. 126/1999, *Haad v. Switzerland*, Views of 10 May 2000.

[t] General comment No. 1 (note o above), para. 6. See also communication No. 256/2004, *M.Z v. Sweden*, Views adopted on 12 May 2006, para. 9.3; communication No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5; and communication No. 150/1999, *S.L. v. Sweden* (note e above), para. 6.3.

Communication No. 332/2007

Submitted by:	M.M. et al. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	22 October 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2008,

Having concluded its consideration of complaint No. 332/2007 submitted to the Committee against Torture by M.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is M.M., born in 1978, currently awaiting deportation from Sweden to Azerbaijan, his country of origin. He was apprehended by Swedish police on 22 October 2007. The complainant is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 26 October 2007 and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Azerbaijan while his complaint was under consideration by the Committee. On 10 June 2008, the State party was informed by note verbale that its request of 23 May 2008 for the lifting of the interim measures request had been denied.

The facts as presented by the complainant

2.1 In mid-December 1999, the complainant contacted one of the vice presidents of the Musavat party, Mr. Q.H. He remained in regular contact with him, without becoming an official member of the party. On 10 January 2003, the complainant formally became a member of the Musavat party and began working for it. The complainant's job, which was mainly to recruit new members and to sell the party's official magazine, continued until the presidential election in Azerbaijan on 15 October 2003.

2.2 The Musavat party did not win the election. A demonstration against the alleged rigging of the election was scheduled to take place the day after. On 16 October 2003, the complainant and some 4,000 to 5,000 Musavat supporters started a march from the party headquarters to the Freedom square.

The authorities tried to disperse the demonstrators. The complainant and several other demonstrators were arrested and brought to remand prison. On 17 October, he was transferred to Bayel prison in Baku.

2.3 The complainant was not exposed to inhuman treatment during the first week, but the security guards regularly insulted prisoners. On 24 October 2003, the complainant was brought to the prison manager, Mr. M., and was asked to provide the names of other demonstrators. The complainant refused, and Mr. M. insulted him and his family.

2.4 During the night of 25 to 26 October security guards covered the complainant's head with a hood and carried him out of his cell. After being exposed to verbal abuse and threats, the complainant reconfirmed that he was unwilling to cooperate. His head still covered with the hood, he received punches and kicks all over his body. He was also beaten with a blunt object. After approximately 15 minutes, he lost consciousness.

2.5 The complainant was denied medical care. It took ten days before he was able to stand up again and walk. Then he was brought again to the interrogation room, where he again was subjected to inhuman treatment. The same as during the night of 25 to 26 October was repeated several times. The complainant reaffirmed that he remained unwilling to cooperate. During the following period the complainant was systematically tortured. He had no access to a lawyer and the authorities did not give any reason for his detention.

2.6 On 20 December 2003, the complainant decided to cooperate. He gave the names of five other demonstrators. On 15 March 2004, he was informed that if he wanted probationary release, he had to work undercover in the party so that he could inform the authorities about activities of the Musavat party. He refused to comply. On 25 March 2004, he was brought to a room with a hood over his head, his arms were chained while his legs were put into cold water. When the water reached a temperature considered to be too warm, the pool was refilled with cold water. The complainant does not remember how many times this procedure was repeated, but the treatment caused unbearable pain.

2.7 On 1 April 2004, the complainant stated that he was willing to cooperate with the authorities. He was trained in recovery of the type of information the authorities were interested in. On 1 July 2004, the complainant was temporarily released. His and his wife's passports were confiscated by the authorities.

2.8 The complainant continued to give information about the Musavat party to the authorities. On 28 September 2004, Mr. S.I., a member of Musavat party met with the complainant and threatened to kill the complainant and his family because of these spying activities.

2.9 On 4 January 2005, the complainant arrived in Sweden with his family, and asked for asylum. On 26 January 2005, a preliminary interview was conducted, during which the complainant described his political activity, how he was arrested, his treatment in prison and how he left Azerbaijan.

2.10 On 9 June 2005, a second interview was held. The complainant was asked to provide complementary details to the circumstances he had described in the first interview. He described his activities in the Musavat party, and argued that he had been imprisoned without being convicted. During the interview the complainant was represented by a lawyer.

2.11 On 8 July 2005, the Migration Board rejected the complainant's asylum application. Although the Migration Board acknowledged that police brutality and random arrests were common in Azerbaijan, it considered it unlikely that the complainant was of such interest to the authorities after only a short period of activity within the party, and that he did not have a prominent role.

2.12 His lawyer appealed the decision to the former Aliens Appeals Board, which, on 20 October 2005, rejected the complainant's application. The Aliens Appeals Board argued that the complainant had not made out that he was of such interest to the authorities that he would risk arrest if returned to Azerbaijan. It also concluded that the complainant's family should not be granted a permanent residence permit under Chapter 3 Section 3 of the 1989 Aliens Act.

2.13 In accordance with the interim legislation then applicable, the Migration Board considered the complainant's and his family's case according to Chapter 2, Section 5b of the 1989 Aliens Act. On 3 September 2006, it rejected the application, referring to the following facts:

(a) The family had not resided in Sweden for the period of time required to obtain a residence permit;

(b) The applicants had not submitted any new reasons about their need for protection.

2.14 After the Migration Board's decision, the complainant and his family claimed that there were impediments to the enforcement of the expulsion order. On 25 October 2006, the Migration Board concluded that no new circumstances had been advanced and that no obstacle existed against the execution of the expulsion order under Chapter 12, Section 18 of the 2005 Aliens Act.

The complaint

3.1 The complainant claims a violation of article 3 of the Convention against Torture by Sweden if he and his family are to be deported to Azerbaijan in the light of the treatment suffered by him during his detention in Azerbaijan and continuing interest in him by the authorities.

3.2 The complainant challenges the reasoning of the State party's migration authorities, related to the assessment of his position in the Musavat party. He submits that he had difficulties understanding the interpreter during both interviews before the Migration Board.

3.3 According to the complainant, the risk of him being persecuted and tortured in Azerbaijan is both personal and present. In his opinion, Swedish authorities never made a comprehensive investigation about his need for protection.

The State party's observations on the admissibility and the merits

4.1 On 23 May 2008 the State party commented on the admissibility and merits of the communication. On admissibility, it acknowledges that available domestic remedies have been exhausted. It maintains that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of the Convention if deported to Azerbaijan fails to rise to the basic level of substantiation required for purposes of admissibility. Accordingly, the communication should be declared inadmissible as manifestly ill-founded.

4.2 On the merits, the State party recalls that Azerbaijan became a party to the Convention against Torture in 1996 and has made a declaration under article 22. It has been a member of the Council of Europe since January 2001 and is a State party to the European Convention on Human Rights and other major international human rights instruments. The Council of Europe monitors the human rights situation in the country, and some progress has been made. Criminal proceedings have been initiated and disciplinary measures taken against policemen and other government officials found guilty of human rights violations, and torture has been defined as a crime in the new Criminal Code. However, the State party admits that numerous human rights abuses still occur in Azerbaijan, including arbitrary detentions, beatings and torture of individuals in custody.

4.3 For the State party, several circumstances give reason to question the complainant's allegations of ill-treatment. He told the Swedish migration authorities that he was released on bail, while he claims before the Committee that he was released on the condition that he would work for the Azerbaijani authorities. According to investigation initiated by the Swedish consulate in Baku, the complainant never was a member of the Musavat party and has never worked for it. He was not held in custody from 16 October 2003 to 1 July 2004. There is no information that the complainant committed any crime. According to information from Azerbaijani police authorities, the complainant is not wanted in Azerbaijan. The State party believes this information is correct. The complainant has provided no evidence that he was held in custody or mistreated and tortured by authorities in Azerbaijan.

4.4 The State party endorses the opinion of the Migration Board that the existence of any threats from party members is a matter for the law enforcement authorities to deal with. The applicant has not shown that it is probable that he cannot obtain protection from Azerbaijani authorities.

4.5 The State party maintains that the complainant has not shown substantial grounds for believing that he will run a real and personal risk of being subjected to treatment contrary to article 3 if deported to Azerbaijan. It recalls that in a previous case, the Committee took note of the State party's argument that Azerbaijan had made progress in order to improve the human rights situation since it joined the Council of Europe.[a]

4.6 The State party maintains that the complainant's state of health (alleged post- traumatic stress disorder) does not constitute sufficient grounds for being granted asylum in Sweden. In addition, it is not unlikely that the complainant's scars were at least partly caused by a car accident he was involved in as a child.

Complainant's comments on the State party's observations

5.1 On 15 September 2008, the complainant commented on the State party's observations. He emphasizes that he was not only a member of Musavat, but that he was employed by it and had close contacts with one of the party's vice presidents.

5.2 The complainant insists that he was not represented by counsel during the first interview before the Migration Board on 25 January 2005. He had considerable and significant difficulties in understanding the interpreters, and it is thus quite normal that misunderstandings occurred.

5.3 There is a high risk of torture in Azerbaijan, and his fear is well-founded, real and present, as the complainant reneged his assignment to work undercover for the authorities and left the country during an ongoing criminal investigation. The previous personal history of severe physical abuse and torture by the Azeri authorities establishes a situation of personal risk.

5.4 The report requested by the Swedish consulate in Baku contains several inaccuracies. It does not describe how the work was carried out, and it is extremely short. Low evidentiary value should be attached to this report.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainant has complied with the requirements in article 22, paragraph 5 (b).

6.4 The State party submits that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it fails to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention. The Committee considers, however, that the complainant has made sufficient efforts to substantiate his claim of a violation of article 3 of the Convention, for purposes of admissibility. Accordingly, the Committee declares the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the complainant's removal to Azerbaijan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 (1996) on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.[b] However, the risk does not have to meet the test of being highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. Furthermore, the Committee observes that considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of facts that are made by organs of the State party concerned. The complainant has not convinced the Committee that the authorities of the State party which considered the case did not conduct a proper investigation. In addition, the complainant did not present any ID and claimed before Swedish authorities that there was no contact or reference in Azerbaijan which the State party could contact to receive information about his activities and the current situation. Anyway, the Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[c]

7.4 The Committee has noted the claim that the complainant would be tortured if deported to Azerbaijan on account of his past political activities. It also notes that he claims to have been tortured in the past and that, in support of his claims, he provides medical reports from a hospital in Stockholm. These reports are not definitive, nor completely coinciding in their diagnosis. The psychiatric report states that it is possible that M.M. has psychiatric problems consistent with a posttraumatic stress disorder, while the forensic report states that the findings of the examination can strengthen/verify that torture has taken place.

7.5 Even if the Committee were to accept the claim that the complainant was subjected to torture in the past, the question is whether he currently runs a risk of torture if returned to Azerbaijan. It does not necessarily follow that, several years after the alleged events occurred, he would still currently be at risk of being subjected to torture if returned to Azerbaijan in the near future.

7.6 As regards the complainant's past political activities, the Committee recalls that it is disputed that the complainant was a member and/or employee of the Musavat party. Furthermore, even if he was a confirmed member or employee of the party, it is not clear that his activities were of such significance as to currently attract the interest of the authorities if returned to Azerbaijan. In his first asylum interview in the State party, the complainant explained that his activities for the party consisted in the handing out of flyers and newspapers. In addition, there are contradictions in the complainant's statements at different stages of the proceedings concerning the regime of his probationary release (above, paragraph 4.3). Further, the evidence submitted by the complainant does not suggest that he is currently being subject to any charges in Azerbaijan. The Committee also notes that the State party affirms that the complainant was never a member of or worked for the Musavat party, he was not held in custody, and he is not wanted in Azerbaijan. The Committee recalls that in these circumstances and pursuant to its general comment No. 1, the burden to present an arguable case is on the complainant.[d] In the Committee's opinion, the complainant has not discharged this burden of proof.

7.7 In light of all the above, the Committee is not persuaded that the complainant would face a foreseeable, real and personal risk of being subjected to torture if returned to Azerbaijan and therefore concludes that his removal to that country would not constitute a breach of article 3 of the Convention.

8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Azerbaijan by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] *A.H. v. Sweden*, communication No. 265/2005, para 11.7, Views adopted on 16 November 2006.

[b] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX, para. 6.

[c] Ibid., para. 9.

[d] Ibid., para. 5.

B. Decision on inadmissibility

Communication No. 323/2007

Submitted by:	J.H.A.
On behalf of:	P.K. et al.
State party:	Spain
Date of the complaint:	7 May 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2008,

Having concluded its consideration of complaint No. 323/2007, submitted by J.H.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all written information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is J.H.A., a Spanish citizen and member of the non-governmental organization Colectivo por la Justicia y los Derechos Humanos. He is acting on behalf of P.K. et al., all Indian citizens detained in Mauritania at the time of submission of the complaint.

1.2 In accordance with article 22, paragraph 2, of the Convention, the Committee transmitted the complaint to the State party by a note verbale dated 22 June 2007. At the same time, the Committee requested the State party to take the necessary measures within its power to ensure adequate conditions of detention for the alleged victims, including access to a lawyer and the right to be heard by the competent authorities.

Factual background

2.1 On 31 January 2007, the Spanish maritime rescue tug *Luz de Mar* sailed from Tenerife in the Canary Islands, Spain, in response to a distress call sent by the cargo vessel *Marine I*, which had capsized in international waters with 369 immigrants from various Asian and African countries on board.

2.2 On 4 February 2007, the *Luz de Mar* reached the *Marine I* and towed it. At that time, diplomatic negotiations began between Spain, Senegal and Mauritania regarding the fate of *Marine I*, as a result of which the two ships remained anchored off the Mauritanian coast for eight days.

2.3 On 9 February, a Spanish Civil Guard patrol boat carrying members of the non-governmental organization Médecins du Monde, a representative of the Spanish Ministry of the Interior and Civil Guard personnel, accompanied by a delegation from Guinea, which had come to identify persons of African origin aboard the *Marine I*, tried to reach the place where the ships were anchored. However, the operation was hampered by poor sea conditions. On 11 February, the operation resumed, with the additional presence of Spanish Red Cross personnel and Mauritanian health personnel. After boarding the *Marine I*, members of the operation provided health care to the passengers, who were in a poor state of health.

2.4 On 12 February, the Spanish and Mauritanian Governments concluded an agreement that allowed the passengers of the cargo vessel to disembark in the port of Nouadhibou, Mauritania, the same day.[a] In the hours that followed, the Spanish national police force proceeded to identify the immigrants who had landed. Of these, 35 persons of Asian origin were transferred to the Canary Islands to initiate asylum application procedures on the advice of the Spanish Commission for Refugee Assistance (CEAR). Another 35 persons, of African origin, were transferred to the Canary Islands on 13 February on an aircraft chartered by Spain. The complainant argues that neither the proper procedures nor the guarantees provided for under Spanish legislation governing aliens were observed during this transfer. He adds that, according to official Spanish sources, the place to which the persons were transferred had to be kept secret for security reasons. On 16 March, these individuals were transferred to Guinea, although their precise whereabouts remain unknown.

2.5 On 14 February 2007, the immigrant identification process was completed. According to the complainant, all but 23 of the alleged victims requested asylum or signed voluntary repatriation agreements and were repatriated to India or Pakistan with the assistance of the International Organization for Migration (IOM). During the recognition procedure, the alleged victims declared that the reason for their departure from India was fear of ostensible persecution as a result of the conflict in Kashmir.

2.6 The 23 alleged victims, who refused to sign voluntary repatriation agreements, remained in detention under Spanish control in Nouadhibou in a former fish-processing plant. The complainant states that the vessel on which the immigrants were detained lacked sufficient light and ventilation and that the detainees were not allowed out. He added that although the vessel was large, the detainees were obliged to remain confined in a restricted area and to sleep on the ground, on plastic and blankets. He reports that access to toilet and shower facilities was subject to the authorization of the guards supervising the detainees, and that the latter were occasionally forced to urinate in bottles.

2.7 On 4 April 2007, the complainant submitted a complaint to the Office of the Attorney General, which was deemed inadmissible.

2.8 On 6 April, the alleged victims began a hunger strike in protest against their situation; they ended the strike three days later, after allegedly reaching an agreement with the Spanish authorities, which had offered them three options: remaining in the detention centre indefinitely, repatriation or transfer to one of the following third countries: Morocco, Senegal, Mali, Egypt or South Africa. The complainant states that the detainees exercised the third option.

2.9 At the time the complaint was submitted, three months after they had left the *Marine I*, the alleged victims were still being detained in the place and conditions described. The complainant states that although the alleged victims were detained in Mauritania, they were effectively under Spanish control. He alleges that Spain assumed responsibility for them by rescuing them in international waters and was in charge of their supervision during the entire period of their detention in Nouadhibou.

2.10 The complainant argues that the alleged victims were unable to submit a complaint to the Committee themselves because they were detained in Mauritania, ostensibly without access to a lawyer and with no possibility of contacting their families. He notes that most of them have a low cultural level and therefore do not know their rights.

The complaint

3.1 The complainant alleges that Spain has violated article 1, paragraph 1, articles 3, 11, 12 and 13, article 14, paragraph 1, and article 16, paragraph 1, of the Convention.

3.2 He argues that the treatment of the alleged victims amounts to torture as defined in article 1.

3.3 He alleges a violation of article 3 because, if returned to India, the alleged victims would be subjected to torture or cruel, inhuman and degrading treatment, taking into account the conflict in Kashmir and the persecution they would allegedly face as a result of this conflict.

The State party's observations on admissibility

4.1 In its note verbale dated 21 August 2007 the State party argues that the complaint is inadmissible because the complainant is not competent to represent the alleged victims. The State party points out that, as he himself acknowledges, the complainant has not been empowered to act on anyone's behalf before the Committee.

4.2 The State party also maintains that the complaint is inadmissible because the complainant has failed to exhaust domestic remedies, having never attempted to initiate proceedings in Spain. It reports that proceedings relating to this matter are taking place at the national level, having been instituted by the Spanish Commission for Refugee Assistance (CEAR), which was duly authorized to do so by the alleged victims; these proceedings led to the filing of an application for the remedy of administrative litigation on 5 March 2007, a decision on which is currently pending in the National High Court.

4.3 The State party maintains that the complainant's account of the incidents is biased and tendentious. It denies that detainees were "piled on top of each other" in the Nouadhibou detention facility, and it maintains that the vessel in which the detainees were found was spacious and adequate for an extended stay. It adds that the 369 immigrants on board the *Marine I* were in very poor hygiene (scabies) and health (dehydration and disease) when they were rescued in international waters, and that they received emergency humanitarian and medical treatment on board the ship.

4.4 The State party points out that its actions were at all times consistent with the SOLAS and SAR Conventions,[b] and that it was Senegal, the State in whose area of responsibility for rescue at sea the vessel was located, that authorized their transfer to the nearest port, which happened to be Nouadhibou, Mauritania. The emergency diplomatic agreement concluded with the Mauritanian authorities allowed Spain to provide technical support to Mauritania in the form of humanitarian and medical assistance.

4.5 The State party notes that both the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) participated in the identification and repatriation of the persons on board the *Marine I*, and that both of these organizations commended the Spanish Government on the way it had handled the situation. It points out that during the identification of the persons on board the vessel, IOM informed each of the interviewees individually of their right to request asylum and refugee status. Those interviewees who believed that they fell into one of the categories established under asylum and refugee law were taken to the Canary Islands for a decision by the Spanish Government; there they were again interviewed by representatives of UNHCR.

4.6 The State party points out that both IOM and the identification missions from India and Pakistan sought to interview the 23 alleged victims on numerous occasions and that the latter objected to such interviews. According to statements by the UNHCR spokesperson in Spain, a team of lawyers from the Office met with the 23 immigrants; UNHCR subsequently issued a communiqué through the team stating that the interviewees' profile was not strong enough to warrant their being granted refugee status and that they had not given sufficient evidence to indicate that their lives would be in danger if they returned to their countries of origin. On 20 April 2007, the High Commissioner for Refugees addressed a letter to the President of the Government of Spain affirming that "[there was] no one in this group who [required] international protection".

4.7 According to the State party, as soon as the passengers of the *Marine I* disembarked, the Spanish Government ensured that they were directly transferred to a reception centre that had been adequately equipped with tents and cots. The individuals received three hot meals a day adapted to their dietary requirements. They also received prompt medical treatment from the Red Cross and Médecins du Monde; they were treated for scabies and underwent surgical procedures. They were also allowed to take one shower a day and were given a change of clothes once a week.

4.8 Lastly, the State party affirms that the diplomatic agreement concluded with Mauritania provided, inter alia, for the temporary presence in Mauritanian territory of Spanish security forces to provide the Mauritanian authorities with technical support and to ensure that intake and repatriation operations proceeded normally. It consequently denies that the immigrants were ever irregularly detained.

The complainant's comments

5.1 On 18 October 2007, the complainant reiterated his arguments regarding his capacity to represent the alleged victims and the exhaustion of domestic remedies. He states that the existence of a domestic procedure initiated by CEAR does not prevent the Committee from ruling on the present complaint, especially as the application for the remedy in question was rejected.

5.2 The complainant maintains that the only safe port in the area to which the immigrants on board the *Marine I* could have been transferred was in the Canary Islands, Spain, given the living conditions in African coastal countries. He notes that it took two weeks from the time the vessel was found until it was taken to Mauritania and that during this time no medical or humanitarian assistance was provided to the passengers, nor was any of them evacuated on health grounds, and that it was only when they disembarked that "serious" first aid, which by law must be provided immediately, was made available. The complainant maintains that during these two weeks the 369 persons on board the *Marine I* were crammed together below deck, receiving food by means of ropes, and that no medical personnel was able to provide assistance or board the vessel to ascertain their state of health.

5.3 The complainant maintains that because Mauritania had not signed the SAR Convention, it did not feel obliged to admit the immigrants to its territory and that Spain paid Mauritania to take them in, while the immigrants, according to newspaper reports, were kept under Spanish and Mauritanian control.

5.4 Lastly, the complainant reiterates his allegations regarding the conditions of detention of the alleged victims as described in the initial complaint.

State party's observations on the merits

6.1 In notes dated 18 December 2007 and 3 January 2008, the State party reiterates its arguments regarding the admissibility of the complaint, namely the complainant's alleged lack of competence to submit a complaint to the Committee under article 22 of the Convention and the failure to exhaust domestic remedies. It likewise maintains that Spain bears no responsibility because the incidents took place outside its jurisdiction. It points out that the action it took far exceeded its international obligations relating to assistance and rescue at sea, which were limited to rescuing the boat and bringing it to a safe port without any concomitant responsibility for the treatment, care and repatriation of the passengers who had been on board.

6.2 The State party informs the Committee that, in its decision of 12 December 2007, the National High Court rejected the application for administrative litigation submitted by CEAR under the Special Act for the protection of fundamental human rights. The National High Court held that the incidents in question constituted political acts on the part of the Government, namely acts of humanitarian assistance performed pursuant to international norms, and that they were exempt from judicial prosecution under Act No. 29/1988 of 13 July 1988, regulating the remedy of administrative litigation. The High Court also held that the measures agreed in respect of the persons offloaded at Nouadhibou were taken by the Mauritanian authorities pursuant to the laws of that country, and that it was thus up to the Mauritanian courts to determine whether the irregularities alleged by CEAR had actually occurred. The State party notes that the aforementioned decision is likely to be reviewed and that it confirms that domestic procedures relating to this matter do exist, and it argues that the complainant is acting inappropriately and in abuse of the right to submit complaints.

6.3 According to the final report of Médecins du Monde issued on 29 July 2007, 6 of the 23 alleged victims were taken to Melilla, Spain; 1 was granted refugee status by Spain while the remaining 5 were permitted to take up residency in Spain on humanitarian grounds.

6.4 Lastly, the State party reiterates its previous arguments relating to the conditions of detention of the alleged victims and contests the complainant's description of events.

The complainant's comments

7.1 On 18 February 2008, the complainant reiterated his previous arguments on admissibility and the merits of the complaint.

7.2 The complainant maintains that the action taken by the State party was not motivated by humanitarian considerations but by an international obligation, and that it had assumed its responsibility for the alleged victims at every phase of its action.

7.3 According to information contained in press articles submitted by the complainant, in July 2007, 13 of the 23 alleged victims were repatriated, 4 were sent to Portugal and 5 were taken to the short-stay residential facility for immigrants (CETI) in Melilla, Spain. The complainant invites the Committee to visit this facility to take statements from the five detainees. He claims that as a volunteer social activist he lacks the necessary resources and permits to travel to Melilla and take part in this investigation.

Issues and proceedings before the Committee

8.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

8.2 The Committee takes note of the State party's argument that the complainant lacks competence to represent the alleged victims because the incidents forming the substance of the complaint occurred outside Spanish territory. Nevertheless, the Committee recalls its general comment No. 2 (2007), in which it states that the jurisdiction of a State party refers to any territory in which it exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law.[c] In particular, it considers that such jurisdiction must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention. This interpretation of the concept of jurisdiction is applicable in respect not only of article 2, but of all provisions of the Convention, including article 22. In the present case, the Committee observes that the State party maintained control over the persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place at Nouadhibou. In particular, the State party exercised, by virtue of a diplomatic agreement concluded with Mauritania, constant de facto control over the alleged victims during their detention in Nouadhibou. Consequently, the Committee considers that the alleged victims are subject to Spanish jurisdiction insofar as the complaint that forms the subject of the present communication is concerned.[d]

8.3 The Committee takes note of the State party's contention that the complainant is not competent to represent the alleged victims because they did not authorize him to do so. The complainant has affirmed that the alleged victims could not themselves submit a complaint to the Committee on account of their conditions of detention in Mauritania. The Committee would point out that, in accordance with subparagraph (a) of rule 107 of its rules of procedure, the individual designated to submit a complaint under article 22 of the Convention is the victim himself/herself, his/her relatives or designated representatives or others on his or her behalf when it appears that the victim is unable personally to submit the complaint, and when appropriate authorization is submitted to the Committee. In the present case, the alleged victims should have expressly authorized the complainant to approach the Committee on their behalf, unless it was impossible for them to do so, given their situation.[c] The Committee observes that during their detention in Nouadhibou the alleged victims were interviewed by representatives of UNHCR, IOM and the non-governmental organization Médecins du Monde. It likewise observes that, with the authorization of the alleged victims, the Spanish Commission for Refugee Assistance applied for a remedy at the domestic level relating to the same events. Thus, the information before the Committee does not permit the Committee to conclude that it would not have been possible at any time to reach the alleged victims in order to obtain their consent to be represented before the Committee, particularly when application for a domestic remedy had already been made in connection with their situation. Nor can it be concluded that alleging a lack of financial resources exempts the complainant from obtaining the consent of the alleged victims who were subsequently moved to Melilla to act on their behalf. In such circumstances, the Committee considers that the complainant lacks competence to act on behalf of the alleged victims in accordance with article 22, paragraph 1, of the Convention.

8.4 Having concluded that the complainant does not have *locus standi*, the Committee considers that there is no need to rule on the question of exhaustion of domestic remedies.

9. Accordingly, the Committee against Torture decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the complainant.

Notes

[a] The complainant notes that this agreement provided for the payment of €650,000 to Mauritania by Spain for transfer of the immigrants to Mauritania.

[b] The International Convention for the Safety of Life at Sea, 1974 (SOLAS Convention) and the International Convention on Maritime Search and Rescue, 1979 (SAR Convention).

[c] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44* (A/63/44), annex VI, para. 16.

[d] See the Committee's decision in *Guengueng et al. v. Senegal*, communication No. 181/2001, adopted on 17 May 2006, para. 9.3.

[e] See the decisions of the Human Rights Committee on admissibility in *E.H.P. v. Canada* (communication No. 67/1980), adopted on 27 October 1982, para. 8 (a); and *X v. Serbia* (communication No. 1355/2004), adopted on 26 March 2007, para. 6.3; and its Views in *Sultanova v. Uzbekistan* (communication No. 915/2000), adopted on 30 March 2006, para. 6.2; *Abbassi v. Algeria* (communication No. 1172/2003), adopted on 28 March 2007, para. 7.3; and *Benhadj v. Algeria* (communication No. 1173/2003), adopted on 20 July 2007, para. 7.3.

09-52627 (E) 061009

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